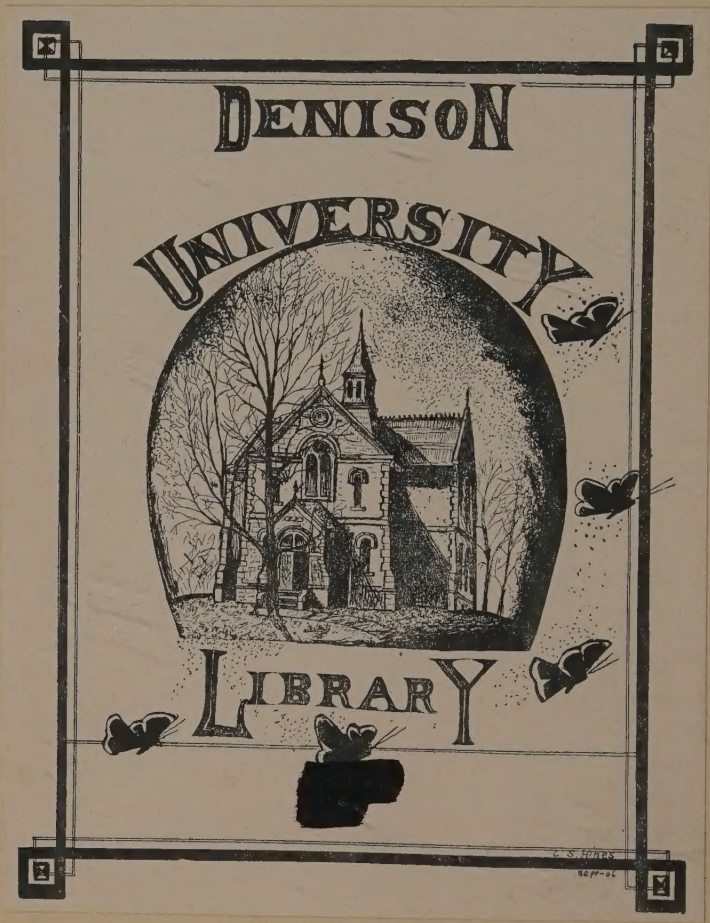

WITHDRAWN

'THE body of the book deals comprehensively with the Court's organization, jurisdiction and procedure, and contains, in addition, an outline of the steps leading up to its creation, an account of each of the cases heard by the Court from its establishment to the time of going to press, and a short chapter on sanctions and the relation between the Court and the League of Nations. In the Appendix is printed in full the English text of all the operative documents constituting the Court or relating to it, as well as a certain number of drafts and reports drawn up in the course of the preparatory deliberations.'—*From the Preface.*

The Permanent Court of International Justice

The Permanent Court of International Justice

its Constitution, Procedure and Work

BY

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PREFACE

The Permanent Court of International Justice is now an established institution with a substantial record of judicial work to its credit. In fulfilment of its mission as the "World Court" it has already disposed successfully of no less than fourteen cases, some of which involved serious international issues, so that it can be fairly regarded as having passed out of the experimental stage. The time seems, therefore, to have come for a book devoted exclusively to the subject. In writing this book, I have had in view two classes of readers: first, the lawyers, diplomatists and others who, in one way or another, may be concerned in a professional capacity in cases before the Court; and secondly, that section of the public which is interested in international affairs generally, and the League of Nations in particular. My aim has been to write a practical text-book on the Court and its work, and for this reason I have avoided dealing with the history of international arbitration or other general topics, except in so far as they are directly relevant to the subject in hand.

The body of the book deals comprehensively with the Court's organization, jurisdiction and procedure, and contains, in addition, an outline of the steps leading up to its creation, an account of each of the cases heard by the Court from its establishment to the time of going to press, and a short chapter on sanctions and the relation

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between the Court and the League of Nations. In the Appendix is printed in full the English text of all the operative documents constituting the Court or relating to it, as well as a certain number of drafts and reports drawn up in the course of the preparatory deliberations. In the account of the cases I have made a point of citing the more important passages from the Court's decisions, in view of their special authority as statements of international law.

I desire to express my appreciation and gratitude to M. Åke Hammarskjöld, the Registrar of the Court, for his unfailing courtesy and valuable assistance in supplying me with information on many matters, and also to thank my learned friend, Sir Cecil Hurst, K.C.B., K.C.M.G., K.C., Legal Adviser to the Foreign Office, for his kind help in clearing up one or two points.

A. P. F.

1 King's Bench Walk, Temple, E.C.
March 31, 1925.

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I

CREATION OF THE COURT

THE Permanent Court of International Justice came into existence in consequence of the provisions contained in Article 14 of the Covenant of the League of Nations,[1] which states that "the Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice." As is well known, the Covenant formed part of the Treaty of Versailles, of the Treaty of St. Germain, of the Treaty of Trianon, and of the Treaty of Neuilly. The Treaty of Versailles was signed by the representatives of the United States of America, the British Empire, France, Italy, Japan, Belgium, Bolivia, Brazil, Cuba, Ecuador, Greece, Guatemala, Haiti, The Hedjaz, Honduras, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam, Czecho-Slovakia, Uruguay, and Germany. The Treaty of St. Germain was signed on behalf of the five Great Powers, Belgium, China, Cuba, Greece, Nicaragua, Panama, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam, Czecho-Slovakia, and Austria; the Treaty of Trianon by the same parties as the Treaty of St. Germain, with the substitution of Hungary for Austria; and the Treaty of Neuilly by most of the same Powers on the one hand and Bulgaria on the other. Each of the Treaties was in due course ratified by all the signatories, with the exception of the United States.

It is, therefore, evident that the idea which the Court embodies was conceived and repeatedly approved by a

[1] Set out at p. 232 *infra*.

large number of States before the organized institution came into being.

But the expression of the general desire for an international court of justice was not limited to the States mentioned above. Those States were all belligerents in the great war of 1914-1918. In addition to them, the neutral countries of the world were invited to accede to the Covenant and did so, thus expressing their support of the project to establish the Court.

The origin of the Court demonstrates the almost universal realization of the urgent need of the whole body of nations for an institution capable of deciding international disputes judicially. The war was the immediate and irresistible motive power which impelled so many States to abandon the hesitations and doubts which had up to then (and notably at The Hague Conference of 1907) blocked the way to the establishment of an international court of justice as contrasted with courts of arbitration.

On February 13, 1920, at its second public meeting, held in London at St. James's Palace, the Council of the League took the first step towards carrying out the duty with which it was charged under Article 14 of the Covenant by passing a Resolution[1] inviting a number of distinguished jurists, representative of the different civilizations and legal systems of the world, to form a committee to prepare plans for the Court and report to the Council.

In view of the importance of their work, it is of interest to record the names of the members of this Advisory Committee as finally constituted,[2] viz. :—

Mr. Mineichiro Adatci, Japanese Minister at Brussels.
M. Rafael Altamira, Senator; Professor of Law at the University of Madrid.
M. Clovis Bevilaqua,[3] Professor of Law of Pernambuco

[1] See *League of Nations Official Journal*, March 1920, pp. 36-37.
[2] *Ibid.* March 1920, pp. 36-37, 71 ; June 1920, pp. 122-123 ; July-Aug. 1920, pp. 218-219.
[3] This gentleman was not able to be present at the meetings of the Committee. South American jurists were accordingly represented by M. Raoul Fernandes, formerly Brazilian delegate to the Paris Peace Conference. *Ibid.* July-Aug. 1920, p. 226 ; *Procès Verbaux of Proceedings of the Committee* (The Hague : van Langenhuysen Bros.), Preface.

and Legal Adviser to the Ministry of Foreign Affairs of Brazil.

Baron Descamps, Belgian Minister of State; Professor of International Law at Louvain University; Member of the Permanent Court of Arbitration at The Hague.

M. Francis Hagerup, Norwegian Minister at Stockholm; former Premier of Norway.

M. Albert de Lapradelle, Professor of International Law at the University of Paris.

Dr. Loder, Member of the Court of Cassation of the Netherlands.

Lord Phillimore, a Member of the Privy Council and formerly a Lord Justice of Appeal.

M. Arturo Ricci-Busatti, Minister Plenipotentiary, and Chief Legal Adviser to the Italian Ministry of Foreign Affairs.

Mr. Elihu Root, former Secretary of State of the United States; Member of the Permanent Court of Arbitration at The Hague.

The Advisory Committee of Jurists met at The Hague on June 16, 1920, and, as was pointed out by M. Léon Bourgeois,[1] who was delegated by the Council of the League to address the opening meeting, five problems arose for consideration and solution:

How should the Court be organized, and, in particular, how should its members be appointed?

What should be their number and status?

In what place should the seat of the Court be fixed?

What should be its rules of procedure?

What, finally, should be the limits of its jurisdiction?

Similar questions had formed, on previous occasions in the development of international relations, the subject of anxious, painstaking, even painful, examination, negotiation, and debate, and one or other of them had invariably proved a stumbling-block to the establishment of a court of justice adjudicating between States.

[1] *League of Nations Official Journal*, July-August 1920, pp. 228, 229-230.

At the second Hague Conference in 1907, a determined effort was made, on the proposition of the United States, to complete the partial achievement of the first Conference, in setting up the Permanent Court of Arbitration by creating a "Court of Arbitral Justice," but notwithstanding the enthusiastic support of many Powers, both great and small, agreement proved impossible, and the project ended in a mere recommendation. That effort was wrecked by the problem of the appointment of the judges—the Great Powers requiring permanent representation, and the small States insisting on equal rights.

Notwithstanding the difficulty of their task, the Committee of Jurists set up by the League of Nations evolved and unanimously agreed upon a Draft Scheme[1] for the establishment of the Permanent Court of International Justice by July 24, 1920,[2] *i.e.*, less than six weeks from the commencement of their labours—a truly remarkable achievement. Although the Draft Scheme[3] was subsequently amended by the Council and the Assembly of the League, it remains the basis, and contains, broadly speaking, the system of the Court as actually set up.

It is worth while to pause for a moment in order to consider the work of the Committee. The main problems that had to be solved were those of:

1. Organization.
2. Jurisdiction.
3. Procedure.

Of these, the first two were the most important and also the most difficult. They occupied the greater part of the Committee's time, and called out most intensely the admirable legal and statesmanlike qualities of the members.

The capital question may be said to have been that of organization, *i.e.*, the method of appointment, the number and the position of the judges. The problem here

[1] Set out in Appendix, p. 289 *infra*.

[2] See *League of Nations Official Journal*, July-August 1920, p. 238.

[3] Set out in Appendix, p. 289 *infra*.

was to reconcile the legal principle of the equality of States as subjects of international law with the reality of their political inequality, crystallized in the distinction between Great Powers and other States. In order to command respect and be capable of fulfilling the great task entrusted to it, the Court must embody both factors; it must at the same time be based upon respect for international law and recognition of international realities. The Great Powers must have the preponderance of representation in the Court to which their position entitles them and without which they would never consent to submit themselves to its jurisdiction, and yet the smaller Powers must secure the representation due to their rights of sovereignty and independence. The difficulty might well seem insoluble. It had proved so in 1907. But in 1920 the existence of an organized League of Nations enabled a solution to be found. The credit of devising it is attributable to Mr. Elihu Root in collaboration with Lord Phillimore. It is they who suggested[1] the idea of a joint election of the judges by the Council and Assembly of the League, the result being to combine a preponderating voice for the Great Powers, which are permanently represented in the Council, with an equal voice by all the Powers, great and small, through the Assembly, which includes them all without distinction.

It will be appreciated that this plan, although in the nature of a compromise, has the unusual merit of achieving its object without sacrifice of principle, inasmuch as by means of the Assembly vote every State secures representation on a footing of equality.

The "Root-Phillimore plan," as it was called, borrowed from other members of the Committee the idea of making use of the existing institution of the Permanent Court of Arbitration at The Hague by providing that the members of that body, acting by national groups, should nominate the candidates for election to the new Court, this list of

[1] See *Procès Verbaux of the Proceedings of the Committee*, 5th Meeting, pp. 133-135, 138-139, Annex No. 2; 6th Meeting, pp. 150-153, Annex No. 4; 13th Meeting, p. 281, Annex No. 1.

candidates being that from which the election was to be made by the Council and Assembly.[1] The number of judges was fixed at eleven, with four supplementary judges.[2]

Such, in outline, was the solution found, and unanimously agreed upon, by the Committee, and now actually embodied in the Statute of the Court.

The method adopted by the Committee of Jurists in regard to the second great question with which they had to deal was in contrast to their scheme for the organization of the Court. As already stated, the second problem was that of jurisdiction, or, to use the Continental expression, competence. Whereas the problem of organization was solved by a masterly compromise, subsequently endorsed by the interested States, that of jurisdiction was disposed of in a more radical manner.

The broad issue was whether the new Court was to have so-called "compulsory" jurisdiction, or whether its competence was to be limited to disputes which the parties agreed to submit to it in each case as it arose. It is to be observed that the phrase "compulsory jurisdiction" is, strictly speaking, inaccurate when applied to litigation between States. A sovereign State can never be arraigned before any tribunal by another State unless it has agreed to accept the tribunal's jurisdiction. This proposition, which follows from the nature of sovereignty, is, of course, universally recognized. The phrase "compulsory jurisdiction" is used loosely to denote jurisdiction conferred once for all by a general agreement between States to submit disputes, usually of a defined character, to a particular tribunal.

The Committee of Jurists, after careful consideration and searching discussion, decided in favour of "compulsory jurisdiction" in this sense. They adopted, in their Draft Scheme, Articles[3] which provided that disputes of a legal

[1] *Procès Verbaux of the Proceedings of the Committee*, 13th Meeting, Annex No. 1, Arts. 6 and 7, p. 299.

[2] *Ibid.* Art. 2, p. 298.

[3] See Draft Scheme, Art. 33 and 34, p. 295 *infra*.

nature, as therein defined, could, when it had been found impossible to settle them by diplomatic means, and no agreement had been made to choose another jurisdiction, be brought before the Court by either party. But, it must be remembered, these very Articles were to form part of a convention agreed to by the Powers concerned, so that the effect of the proposal was that each of the various States should contract with every other to allow itself to be summoned before the Court at the instance of another of the contracting parties in a certain category of disputes.

In adopting this plan, the Committee were giving effect to the declaration of principle, made in the form of a unanimous resolution, by The Hague Conference of 1907.[1] But although the Powers had expressed approval of compulsory arbitration in theory, and despite the fact that, as has just been pointed out, such a scheme in no wise derogates from the legal principles of sovereignty and independence, it undoubtedly marks, in its concrete form, a striking development in the idea of international justice. Individual States, including Great Powers, have frequently made, and continue to make, treaties with other individual States, for the submission of all, or some classes of, disputes to arbitration. But a general convention of the proposed nature made by each State with all the others, without any reservation as to disputes involving "honour or vital interests," would be a bold innovation. It is noteworthy that it received the full support of all the eminent jurists and statesmen who formed the Committee, with the single exception of Mr. Adatci, who made a reservation, although he was in favour of the principle.[2]

This part of the Committee's Scheme was rejected by the Council of the League of Nations, and the system of jurisdiction adopted by the Assembly and embodied in the Statute of the Court is restricted within narrower limits.[3]

The Committee's proposals in regard to procedure do

[1] See Final Act of Second Hague Conference.

[2] See *Procès Verbaux of the Proceedings of the Committee*, 31st Meeting, pp. 651-652.

[3] See pp. 10, 11 *infra*, and Art. 36 of the Statute, set out on p. 249 *infra*.

not appear to call for comment at the present stage. Although amended on some points by the Council and Assembly, they form, in substance, the basis of the system finally adopted, which will be described in a later chapter.[1]

As already indicated, the Committee of Jurists held its final meeting on July 24, 1920.[2] It had then not only completed its Draft Scheme but also unanimously adopted, in accordance with the Continental practice, an explanatory Report,[3] drawn up by M. de Lapradelle.[4]

The Draft Scheme and the Report were transmitted to the Secretary-General of the League, and were brought before the Council, together with a preliminary Report by M. Léon Bourgeois,[5] at its meeting at San Sebastian on August 5, 1920. It was there decided[6] to send the Committee's Scheme and Report to the Governments of all the States, Members of the League, together with a letter[7] pointing out the great importance of successfully establishing the International Court, and to instruct M. Léon Bourgeois to prepare a Report on the Scheme to serve as a basis for the final opinion of the Council.

M. Bourgeois' Report, which was prepared in collaboration with the other members of the Council and took account of the observations made by various Governments, was considered and adopted by the Council at its meeting in Brussels on October 27, 1920.[8]

The most important point raised in this Report was in regard to compulsory jurisdiction. The view was taken

[1] See pp. 95-125 *infra*.

[2] See *Procès Verbaux of Proceedings of the Committee*, p. 751.

[3] Printed in *Procès Verbaux of the Proceedings of the Committee*, pp. 693-746; *Records of the First Assembly, Meetings of the Committees*, pp. 422-462; and also reproduced by the Carnegie Endowment for International Peace.

[4] See *Procès Verbaux of Proceedings of the Committee*, pp. 353, 689.

[5] This Report is printed in *Records of the First Assembly, Meetings of the Committees*, pp. 464-468.

[6] See *League of Nations Official Journal*, Sept. 1920, pp. 318-321.

[7] For text see *League of Nations Official Journal*, special supplement No. 2 (Sept. 1920), p. 3.

[8] See *League of Nations Official Journal*, Nov.-Dec. 1920, pp. 12-18. This Report is set out in the Appendix, pp. 299-309 *infra*.

that the Jurists' Committee's Scheme in the provisions[1] defining the competence of the Court involved a modification of Article 12 of the Covenant,[2] and on this ground the Council proposed to substitute a different system which defined the jurisdiction of the Court by reference to Articles 12, 13, and 14 of the Covenant.[3]

At the same time they were careful to state that "the Council does not in any way wish to declare itself opposed to the actual idea of the compulsory jurisdiction of the Court in questions of a judicial nature. This is a development of the authority of the Court of Justice which may be extremely useful in effecting the general settlement of disputes between nations, and the Council would certainly have no objection to the consideration of the problem at some future date."[4]

Apart from this amendment, some alterations of minor importance were introduced by the Council in the Draft Scheme, which was then adopted[5] for submission to the Assembly.[6]

The first Assembly of the League of Nations met at Geneva on November 15, 1920.[7] It consisted of the representatives of 41 States,[8] inclusive of the four great British Dominions and India, which under the Covenant are entitled to separate representation.

Cognizance was immediately taken of the question of the establishment of the Court, and it was decided to appoint a Committee of the Assembly to deal with it.[9] This Committee (known as the Third Committee) consisted of 36 members, representing as many countries.[10] It held its first meeting on November 17, 1920, when M.

[1] *i.e.*, Art. 33 and 34, p. 295 *infra*.

[2] See p. 231 *infra*.

[3] See pp. 302-304 *infra*.

[4] See *League of Nations Official Journal*, Nov.-Dec. 1920, p. 15.

[5] See *League of Nations Journal*, Nov.-Dec. 1920, p. 18.

[6] The amendments introduced by the Council are set out at pp. 310-311 *infra*.

[7] See *Records of First Assembly*, p. 24.

[8] *Ibid.* pp. 4-15.

[9] *Ibid.* pp. 48, 52.

[10] *Ibid.* pp. 19-20. *Records of First Assembly, Meetings of the Committees*, pp. 275-276.

Léon Bourgeois was elected Chairman, and proceeded to the examination of the question referred to it.[1]

The Committee had before it the Jurists' original Draft Scheme and Report, the Council's Reports and resolutions, and the Draft Scheme as amended by the Council.[2]

The Committee, whilst entering at once upon the discussion of questions of principle,[3] decided to appoint a sub-committee to consider the problem in detail and report to the Committee. This sub-committee consisted of ten members: five former members of the Jurists' Committee and five other legal experts.[4] The sub-committee worked concurrently with the main Committee, which pursued the general discussion of the foremost question of principle in issue, namely, that of compulsory jurisdiction.[5]

The sub-committee discussed and considered the whole of the Draft Scheme and, in addition, examined proposals for amending and improving it made by various Governments and by the "Union Juridique Internationale."[6] Its conclusions were embodied in a revised Draft Scheme which, together with a Report, was presented to the full Committee on December 8, 1920.[7] In view of the light which this Report sheds, in certain particulars, upon the Statute of the Court, it has been thought useful to include it in the Appendix.[8]

It will be observed that, although the sub-committee introduced into the text adopted by the Council at Brussels numerous amendments, these were largely of a drafting character for the purpose of expressing the intention of the former text with greater precision, and, in particular, that

[1] *Records of First Assembly, Meetings of the Committees*, pp. 277, 278.

[2] See *Records of First Assembly, Meetings of the Committees*, p. 278; Annex 1, pp. 411-495.

[3] *Ibid.* pp. 278-283.

[4] See *Records of First Assembly, Meetings of the Committees*, pp. 282-284. The former members of the Jurists' Committee were: MM. Adatci, Fernandes, Hagerup, Loder and Ricci-Busatti. The other legal experts were: Mr. Doherty, MM. Fromageot and Huber, Sir Cecil Hurst and M. Politis.

[5] *Ibid.* pp. 285-294, 333-408.

[6] These proposals are set out in the *Records of First Assembly, Meetings of the Committees*, Annexes 2-6, pp. 496-525.

[7] *Ibid.* p. 296.

[8] See pp. 312-324 *infra*.

the decision of the Council against compulsory jurisdiction was adhered to.[1] Three completely new Articles[2] were, however, inserted, on the proposal of the British delegation, dealing with the special composition of the Court in Labour and Transit cases.

The revised text was considered by the full Committee at its meetings on December 8, 9, 10, and 11, 1920.[3] Various amendments were adopted, one of which was of special importance, viz.:—a provision enabling States when adhering to the Statute of the Court to exercise the option of accepting its jurisdiction as compulsory, *ipso facto*, and without special convention in certain classes of legal disputes.[4] This amendment is now embodied in Article 36 of the Statute.[5]

The revised text was then put to the vote and unanimously adopted by the Committee,[6] which also lent its authority to the sub-committee's Report by unanimously approving it.[7] The Committee further adopted a short Report dealing with its amendments to the sub-committee's text.[8] This document, which supplements and completes the Report of the sub-committee, is also included in the Appendix.[9]

The above outline of the Committee's work would be incomplete without reference to a question which aroused considerable discussion and difference of opinion, namely, the question of the form in which the Statute of the Court should be adopted by the States concerned. Article 14 of the Covenant,[10] which represents the starting point, is open to different interpretations. One view, which was strongly pressed, was that the Court could and should be constituted by the vote of the Assembly of the League alone,

[1] See pp. 319-320 *infra*.

[2] *i.e.* Arts. 26-28, pp. 245-247, and pp. 316-318 *infra*.

[3] See *Records of First Assembly, Proceedings of Committees*, pp. 296-318.

[4] *Ibid.* pp. 312-313; Annex 14, p. 566.

[5] See p. 249 *infra*.

[6] See *Records of First Assembly, Meetings of the Committees*, pp. 314, 317.

[7] *Ibid.* p. 314.

[8] See *Records of First Assembly, Meetings of the Committees*, pp. 317-318; Annex 16*a*, pp. 573-577.

[9] See pp. 324-328 *infra*.

[10] Set out at p. 232 *infra*.

and that it would create a dangerous precedent to require confirmation of its decision by the Member States; others held the opinion that it was both expedient and necessary that, in addition to the vote of the Assembly adopting the Statute of the Court, there should be a formal ratification of the constituent document by the individual States represented.[1]

The latter opinion prevailed and was embodied in a draft Resolution for submission to the Assembly, which provided that in view of the special wording of Article 14 of the Covenant the Statute of the Court should be submitted to the Members of the League for adoption in the form of a protocol duly ratified and confirming their recognition of this Statute.[2]

On December 13, 1920, the Third Committee's Scheme and Report were brought before the plenary meeting of the Assembly.

A debate, remarkable both for the ability and conviction of the speeches, took place, in which the representatives of most of the Great Powers and many other States were heard.[3] Almost without exception regret was expressed at the absence of compulsory jurisdiction from the Scheme, but the necessity for obtaining unanimity, and the argument urged by Mr. Balfour (as he then was) and M. Léon Bourgeois that the growth of the world's confidence in the Court, based on actual experience of its work, was essential for universal acceptance of this principle in its full extension, prevailed. Subject to the introduction of one minor amendment to Article 27, the Statute as drafted by the Third Committee was unanimously adopted by the Assembly, which embodied its decision in the Resolution set out on pp. 239-240 *infra*.[4]

[1] See *Records of First Assembly, Meetings of the Committees*, pp. 281, 298-302, 308, 312-316, 406-408.

[2] See *Records of First Assembly, Meetings of the Committees*, pp. 317-318. The draft Resolution was adopted without alteration by the Assembly. It is set out on pp. 239-240, and p. 328 *infra*.

[3] See *Records of First Assembly, Plenary Meetings*, pp. 436-501.

[4] See *Records of First Assembly, Plenary Meetings*, pp. 497-500. The amendment in question was the substitution, in the last sentence of the

This act of the Assembly marks the accomplishment by the League of Nations of its task in creating the constitution of the Court. It now remained, in accordance with the course determined upon and mentioned in paragraph 2 of the Resolution,[1] for the Governments of the separate States to sign and ratify the Protocol accepting the Statute.

One more duty was left for the First Assembly to perform arising out of Article 32 of the Statute,[2] which provides that the remuneration of the Members of the Court shall be determined by the Assembly on the proposal of the Council. The Council deputed to the Third Committee, which from its labours upon the draft Statute was fully cognizant with all the aspects of the Court, the task of making proposals to the plenary Assembly.[3] The Committee, after careful discussion,[4] submitted a report and resolution formulating its recommendations, which were considered by the Assembly on December 18, 1920, when the proposals made were adopted.[5] The resolution fixing the salaries and allowances of the judges and deputy-judges, together with the report, are printed in the Appendix.[6]

It will be observed that, by the Resolution of the Assembly adopting the Statute of the Court, and the Protocol of Signature of the Statute (set out on pp. 239-240 and 255 *infra* respectively), the Statute was to come into force as soon as the Protocol had been ratified by the majority of the Members of the League. This condition was fulfilled before the meeting of the Second Assembly on September 5, 1921. Further ratifications have, however, been received since that date, the present position being shortly as follows:—

Forty-seven States have signed the Protocol, of which

second paragraph of Article 27, of the words: "When desired by the parties or decided by the Court," for the words: "On all occasions," which appeared in the Draft Statute.

[1] See p. 240 *infra*.

[2] Set out at p. 248 *infra*.

[3] See *Records of First Assembly, Meetings of the Committees*, pp. 316-320; Annexes 17 and 18, pp. 578 and 579.

[4] *Ibid.* pp. 319-326, 329.

[5] See *Records of First Assembly, Plenary Meetings*, pp. 747-748, 765-766.

[6] See pp. 283-285 *infra*.

thirty-seven have ratified, and thereby definitely adhered to, the Statute of the Court. Twenty-three States have signed the Optional Clause for compulsory jurisdiction, with or without conditions, but of them four cannot, by reason of non-ratification, so far be regarded as subject to a binding obligation thereunder.[1]

It is now proposed to give an account of the election of the first members of the Court, which put to the test of practical experience the system laid down in the Statute. On April 1, 1921, the Secretary-General of the League addressed a letter[2] to the Members of the League and to the United States (being a State mentioned in the Annex to the Covenant) requesting them to inform him of the names of their members of the Permanent Court of Arbitration, and in the case of those States which were not signatories of The Hague Conventions of 1899 or 1907 inviting them to appoint national groups under the same conditions as those prescribed for the members of the Court of Arbitration.[3]

The names of all the members of the national groups of both categories, representing forty States in all, were duly communicated to the Secretary-General.[4] On June 1, 1921, in accordance with Article 5 of the Statute,[5] he addressed a written request to these persons inviting them to undertake the nomination of the candidates for election as members of the Court.[6] This request was duly complied with, and the list comprising the persons so nominated was drawn up by the Secretary-General and submitted to the Council and Assembly as provided by Article 7 of the Statute.[7] The list consisted of some sixty names, which, considering that the possible total of

[1] The details of the position as regards signature and ratification appear on pp. 256-259 *infra*.

[2] See *League of Nations Official Journal*, May 1921, pp. 246-247.

[3] See Arts. 4 and 5 of the Statute, p. 241 *infra*.

[4] The list is contained in the League of Nations Document C.L. 12 (*b*), 1921, V. of June 1, 1921.

[5] Set out at p. 241 *infra*.

[6] See *League of Nations Official Journal*, pp. 314, 315.

[7] Set out at p. 242 *infra*.

nominees was 160,[1] is a striking indication of the extent to which different national groups united in selecting the same candidates.

The first meetings for the purpose of the election were held simultaneously and independently the one of the other by the Council and the Assembly on September 14, 1921.[2] The procedure adopted was the following: Each body, having before it the list of candidates, proceeded to vote by secret ballot for the eleven judges. The absolute majority required by Article 9 of the Statute[3] was, in the Council 5 votes out of the 8 members and in the Assembly 22 votes out of the 42 delegations represented.

Confining ourselves to the Assembly, the first ballot resulted in an absolute majority being obtained by nine candidates, viz.:—

MM.	Altamira	(Spain)	23 votes.
	Alvarez	(Chile)	24 „
	Anzilotti	(Italy)	24 „
	Barboza	(Brazil)	38 „
	de Bustamente	(Cuba)	26 „
Lord	Finlay	(Great Britain)	29 „
MM.	Loder	(Netherlands)	24 „
	Oda	(Japan)	29 „
	Weiss	(France)	30 „

Two vacancies remained to be filled in the Assembly's list, and a second ballot was accordingly taken for the selection of two names. This ballot resulted in one candidate only obtaining the requisite majority, viz.:—

Mr. Moore (United States) 21 votes. (Only 40 votes were cast.)

There remained one vacancy. The Assembly therefore proceeded to a third ballot, which, however, did not show an absolute majority for any candidate; so that a fourth ballot became necessary. This had the same negative result, but on the fifth ballot M. Huber (Switzerland) was chosen by 22 votes.[4]

[1] See Art. 5, last para., p. 241 *infra*.

[2] See *Records of Second Assembly, Plenary Meetings*, pp. 222-223, 235-258.

[3] Set out at p. 242 *infra*.

[4] See *Records of Second Assembly, Plenary Meetings*, pp. 236-237, 246-249.

The Assembly's list thus consisted of the following names:—

MM.	Altamira	(Spain).
	Alvarez	(Chile).
	Anzilotti	(Italy).
	Barboza	(Brazil).
	de Bustamente	(Cuba).
Lord	Finlay	(Great Britain).
MM.	Huber	(Switzerland).
	Loder	(Netherlands).
	Moore	(United States).
	Oda	(Japan).
	Weiss	(France).

In the meanwhile the Council had been proceeding with their separate election, which resulted in the following list, which was immediately communicated to the Assembly[1]:—

MM.	Altamira	(Spain).
	Anzilotti	(Italy).
	Barboza	(Brazil).
	de Bustamente	(Cuba).
	Descamps	(Belgium).
Lord	Finlay	(Great Britain).
MM.	Loder	(Netherlands).
	Moore	(United States).
	Nyholm	(Denmark).
	Oda	(Japan).
	Weiss	(France).

As, in accordance with Article 10 of the Statute,[2] the candidates chosen by both the Assembly and Council are considered as elected, the following were declared elected as judges:—

MM.	Altamira	(Spain).
	Anzilotti	(Italy).
	Barboza	(Brazil).
	de Bustamente	(Cuba).
Lord	Finlay	(Great Britain).
MM.	Loder	(Netherlands).
	Moore	(United States).
	Oda	(Japan).
	Weiss	(France).

[1] See *Records of Second Assembly, Plenary Meetings*, p. 249.
[2] Set out at p. 242 *infra*.

But this left two of the eleven places to be filled, and the Assembly and Council therefore proceeded in accordance with Article 11 of the Statute[1] to hold further meetings for the election to the vacant seats, the same procedure being followed.

The result in the Assembly was the selection, on the first ballot, of M. Huber (Switzerland) by 22 votes and M. Nyholm (Denmark) by 27 votes. The Council, at its own independent meeting, chose the same candidates, who were therefore elected, thus completing the quota of judges.[2]

The next step, under Article 8 of the Statute,[3] was the election of the four deputy-judges by the same system.

After three ballots in the Assembly the following names were chosen:—

MM.	Alvarez	(Chile).
	Negulesco	(Rumania).
	Wang	(China).
	Yovanovitch	(Serb-Croat-Slovene State).

The Council's nominees were:—

MM.	Descamps	(Belgium).
	Negulesco	(Rumania).
	Wang	(China).
	Yovanovitch	(Serb-Croat-Slovene State).

MM. Negulesco, Wang, and Yovanovitch were therefore elected deputy-judges,[4] but one seat remained to be filled, and the election of this last member of the Court gave rise to such difference of opinion that recourse became necessary to the joint conference provided by Article 12 of the Statute.[5] Two ballots took place in the Assembly and Council respectively for the selection of the fourth deputy-judge, and in each case the Assembly chose M. Alvarez and the Council M. Descamps. The Assembly

[1] Set out at p. 242 *infra*.

[2] See *Records of Second Assembly, Plenary Meetings*, pp. 251-252.

[3] Set out at p. 242 *infra*.

[4] See *Records of Second Assembly, Plenary Meetings*, pp. 252-254.

[5] Set out at pp. 242-243 *infra*.

therefore requested the formation of a joint conference,[1] and at its meeting on September 15, 1921, by secret ballot, appointed MM. Zahle (Denmark), Motta (Switzerland), and van Swinderen (Netherlands) as its representatives.[2] The Council appointed MM. Hymans (Belgium), Quinones de Leon (Spain), and Wellington Koo (China). The joint conference, so composed, met the same day and unanimously recommended M. Beichmann (Norway) (whose name appeared in the list of candidates[3]) for election.[4] On September 16, 1921, the Assembly took a ballot which resulted in a large majority for M. Beichmann, and the Council, on its side, unanimously selected him.[5] The Court was therefore complete.

At the Assembly's meeting on September 21, 1921, it was announced that each of the judges and deputy-judges had accepted the office conferred upon him.[6]

The Court came together at The Hague in a preliminary session on January 30, 1922, for the purpose of deciding various administrative and other matters, and also for the important tasks of electing the President and Vice-President, appointing the Registrar, and drawing up the Rules of Procedure.[7]

On February 3, 1922, Dr. B. C. J. Loder was elected President of the Court,[8] and M. Åke Hammarskjöld Registrar,[9] and on February 7 M. Weiss was elected Vice-President.[10]

On February 15, 1922, the public inaugural meeting of the Court was held at the Peace Palace in the presence of the Queen of the Netherlands and representatives of the League of Nations and of a large number of States.[11] The

[1] See *Records of Second Assembly, Plenary Meetings*, p. 256-258.

[2] *Ibid.* pp. 572-573. [3] See Art. 12 of the Statute, pp. 242-243 *infra*.

[4] See *Records of Second Assembly, Plenary Meetings*, p. 281.

[5] *Ibid.* pp. 290-291. [6] *Ibid.* p. 293.

[7] See *Publications of the Permanent Court of International Justice*, Series D, No. 2, pp. 1, 237, 238.

[8] *Ibid.* p. 4. [9] *Ibid.* p. 7.

[10] See *Publications of the Permanent Court of International Justice*, Series D, No. 2, p. 26.

[11] *Ibid.* pp. 45-47.

session of the Court continued until March 24, 1922, when the Rules of Procedure[1] were finally adopted.[2] This completed the preliminary work of the Court; it was now ready to enter upon its regular judicial duties.

In accordance with Article 23 of the Statute,[3] the first ordinary session began on June 15, 1922, when the list comprised two cases (to which a third was added) for advisory opinion.[4] From that time forward the Court has continued to hold a yearly ordinary session, as well as extraordinary sessions necessitated by urgent cases.[5]

In order to complete the account of the organization of the Court, it is necessary to refer to the vacancy in its membership caused by the death of one of the judges and the election of his successor. In March, 1923, M. Ruy Barboza (Brazil) died. Under Article 14 of the Statute[6] his successor had to be elected by the same method as that laid down for the first election. The list of candidates was accordingly prepared in the manner described above, except that each of the national groups was limited to two nominations.[7] At the Assembly meeting on September 10, 1923, M. Epitacio da Silva Pessoa (Brazil) was selected, and the Council having made the same choice, he stood elected.[8] Finally, it must be noted that on September 4, 1924, the term of office of the President and Vice-President being due to expire at the end of the year, M. Huber was elected President, and M. Weiss was re-elected Vice-President of the Court.

The foregoing statement enters with some particularity into the details of the creation of the Court, and it may be thought unnecessarily so. It has, however, seemed

[1] Set out at pp. 260-282 *infra*.

[2] *Publications of the Permanent Court of International Justice*, Series D, No. 2, pp. 231-233.

[3] Set out at p. 245 *infra*.

[4] These cases are dealt with below. See pp. 126-144 *infra*.

[5] The cases heard by the Court are dealt with at pp. 126-218 *infra*.

[6] Set out at p. 243 *infra*.

[7] See Art. 5, last para., p. 241 *infra*.

[8] See *Verbatim Record of Fourth Assembly, Fourth Plenary Meeting*, Sep. 10, 1923.

advisable to deal with the subject in this way because of the great importance of the new institution. The object has been to show that this is no haphazard or ill-digested experiment. Some of the ablest legal minds existing at the present time, drawn from all parts of the world, dedicated their energies to the elaboration of its constitution. Their work was submitted to the criticism of the leading statesmen of the day, and again reconsidered and amended by the representatives of the large majority of the civilized countries. Finally, the Statute of the Court has been formally adopted by the Governments of the States in question. It will be endeavoured in the pages that follow to deal with the constitution, jurisdiction, and working of the Court as defined by its Statute and Rules of Procedure, and, lastly, with the actual cases which it has, so far, heard and determined. It is hoped that, in the result, it will become clear that the Court is, in fact, and should in an increasing measure grow to be, a powerful instrument for the promotion of justice and peace between the nations of the world, by the establishment of the rule of law.

II

ORGANIZATION OF THE COURT

ARTICLE 1 of the Statute of the Court,[1] after declaring that the "Permanent Court of International Justice is hereby established," states that this Court is in addition to the Court of Arbitration organized by The Hague Conventions of 1899 and 1907 and to the special arbitration tribunals to which States are always at liberty to submit their disputes. This makes clear what was insisted upon throughout the discussions leading up to the creation of the Permanent Court of International Justice, namely, that the Permanent Court of Arbitration was not to be superseded, but was to co-exist side by side with the new Court, and, further, as indeed goes almost without saying, that the new Court was not intended to preclude recourse to tribunals of arbitration set up *ad hoc* by agreement between the parties. It is obvious that such a step would have been outside the scope of the Statute to effect, even if it had been desired to do so, unless the States adhering to the Statute were to agree to have recourse to the new Court *and no other*, and that notwithstanding the provisions of any arbitration treaties between them to the contrary. As is well known, there are a large number of such treaties in existence providing either with or without reservations for the submission of disputes to a specified method of arbitration. These treaties are unaffected by the Statute, and the tribunals therein contemplated can always be set up and resorted to. At the same time it is open to the contracting parties to amend these treaties by substituting the Permanent Court of International Justice

[1] Set out at p. 240 *infra*.

as the arbiter, and with the growth of confidence in the Court it is not improbable that this course may to a greater or less extent be adopted. But it must not be overlooked that the new Court, as it is hoped to show later,[1] is fundamentally a court of *justice* administering rules of law, and therefore not necessarily suitable for the settlement of disputes of a political nature in which the parties desire to arrive at a compromise based on political considerations. For this purpose one or more arbitrators chosen by the parties themselves with a view to the particular issues may well be the more appropriate tribunal. In this connection it may be permissible to observe that the Permanent Court of Arbitration is, essentially, such a tribunal. That institution commands respect for the valuable work it has accomplished, but it must be recognized that it is not a "Permanent Court" in any real sense of the term. It consists, in effect, of a list of names, designated by the governments of the signatories of The Hague Convention of 1907, from which, when a dispute is referred to arbitration by the parties, they themselves select the arbitrators.[2] The Permanent Court of International Justice, on the contrary, consists of a small body of professional judges, forming a determinate and permanent tribunal always in being, and immediately accessible to the parties.

The Court consists of fifteen members—eleven judges and four deputy-judges.[3] What are their qualifications and how are they chosen?

These questions are answered by Articles 2 and 4-12 of the Statute. The Court is "composed of a body of independent judges, elected regardless of their nationality."[4] The second part of this phrase may seem to express an aspiration rather than a fact. Nevertheless it contains a direction both to the nominators and electors which they are in duty bound to take into account. Whilst it is plain that fair representation of the different countries, civiliza-

[1] See pp. 90-93 *infra*.

[2] See Convention I. of 1907, Articles 44 and 45.

[3] See Art. 3, p. 241 *infra*, which also provides for an eventual increase in number, if future circumstances render it advisable.

[4] See Art. 2, p. 240 *infra*.

tions, and legal systems in the composition of the Court is intended and indeed expressly provided for by the Statute,[1] this direction acts as a reminder that when it comes to appointing the members of the Court it is not their nationality but their personal merits that must form the determining factor.

The qualifications for membership of the Court are (1) high moral character and (2) either eligibility for appointment to the highest judicial offices in their respective countries or being a jurisconsult of recognized competence in international law.[2] The choice of candidates by the nominating body is limited to persons who fulfil this description. It is perhaps worth remarking that the mention of high moral character is not a mere conventional phrase. As was pointed out by Lord Phillimore in the Committee of Jurists, the essential qualities of a good judge of an international court are loyalty, probity, a certain breadth of vision, patience, and courage.[3] The reason for the insertion of the alternative qualifications mentioned under (2) above was to comprehend what may be broadly called the Anglo-Saxon as well as the Latin systems. The judges of the highest courts in the English-speaking countries are not only chosen from among the most distinguished lawyers in their respective countries, but are called upon, in the course of their regular judicial duties, to consider questions of international and constitutional law, whereas this is not, as a rule, true on the Continent or in Latin America. In some of these countries the qualifications required for judicial office do not afford a guarantee of outstanding legal attainments, particularly in international law, and it frequently happens that university professors or private "jurisconsults" are the leading figures in the legal sphere.[4] It is to be observed that the professional character of the judges of the new Court as compared with the Permanent Court of Arbitration is noticeable in

[1] See p. 27 *infra*.

[2] See Art. 2, p. 240 *infra*.

[3] See *Procès Verbaux of the Proceedings of the Committee*, pp. 104-105.

[4] For a discussion on this subject, see *Procès Verbaux of the Proceedings of the Jurists' Committee*, pp. 446-450, 611-612, and Report, *ibid.* pp. 698-699.

the distinction between the conditions of eligibility in the one case and the other. In The Hague Conventions of 1899 and 1907 the qualifications required for the members of the Arbitration Court were high moral character and "recognized competence in questions of international law," which might, of course, allow the appointment of diplomatists and politicians.[1]

Having considered what persons are eligible as members of the Court, we pass to the method of election.

The electorate consists, as has been seen from Chapter I., of the two bodies, the Assembly and Council of the League of Nations,[2] but their choice is limited, save in one exceptional eventuality,[3] to the candidates submitted to them by the nominating authority.[4]

The candidates are nominated by the national groups in the Court of Arbitration, *i.e.* by the members of that Court appointed under Article 44 of The Hague Convention No. I. of 1907, and in the case of Powers which are not parties to that Convention by national groups appointed in the same manner.[5] It will be remembered that Article 44 of The Hague Convention provides for the appointment by each Power of four persons at the most, of recognized competence in questions of international law and of the highest moral character, who may or may not be its own subjects. It is important to notice that the only Powers entitled, through their national groups, to nominate candidates are those which are Members of the League or mentioned in the Annex to the Covenant.[6] It will therefore be appreciated that, at the present time, certain States, and in particular Germany and Russia, are excluded from the right of participating in the nomination of candidates, whilst the United States, which, although not a Member of the League, is mentioned in the Annex to the Covenant, shares that right.

[1] See Convention I. of 1899, Article 23; Convention I. of 1907, Article 44.

[2] See Art. 4, p. 241 *infra*.

[3] See Art. 12, pp. 242-243 *infra*, and pp. 28-30 *infra*.

[4] See Arts. 4 and 7, pp. 241 and 242 *infra*. [5] See Art. 4, p. 241 *infra*.

[6] See Statute, Arts. 4 and 5, p. 241, and p. 255 *infra*.

The advantages of nomination by the national groups in the Court of Arbitration (and the other national groups assimilated to them) are (1) to associate the existing institution with the new Court and thus preserve a measure of continuity in the development of international justice; (2) to secure that the candidates shall be chosen not directly by the Governments but by persons who combine special competence for their task of selecting the best candidates with irresponsibility and a certain degree of independence as regards the Governments by whom they have been appointed. Inasmuch as the members of the national groups are appointed by their Governments it is obvious that the Government exercises an influence upon the selection of candidates, and this is necessary; but, on the other hand, the Government is not committed to the candidates chosen by its groups, and is free, when it comes to the election, to vote for whom it will.

At least three months before an election the Secretary-General of the League of Nations calls upon the members of the groups to nominate within a given time persons in a position to accept the duties of a member of the Court.[1] The maximum number of candidates which any one group may nominate is four, and of these two only can be of the nationality of their group.[2] In no case, however, can the number of candidates nominated be more than double the number of seats to be filled.[2] Thus, if the election is for the full number of judges, or for any less number exceeding one, four nominations are allowed, but if there is only one vacancy to be filled, the national group is limited to two nominees.[3] In such a case there is nothing to prevent both nominees being of the group's own nationality.

It will be appreciated that it is perfectly open to two or more national groups to nominate the same person, and,

[1] See Art. 5, first para., p. 241 *infra*.

[2] See *Ibid.* second para., p. 241 *infra*. This provision was inserted by the Third Committee, in substitution for the Jurists' Committee text, which provided for only two nominees. See pp. 290, 325 *infra*.

[3] See Report of Third Committee, Art. 5, p. 325 *infra*.

as has been mentioned above,[1] this has happened in actual practice. The tendency is for certain outstanding names to be chosen by several groups, thus reducing the list of candidates below the possible maximum.

Article 6 of the Statute[2] provides that before making nominations "each national group is recommended to consult its Highest Court of Justice, its legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law." The object of this provision is to serve as an additional guarantee that the best candidates will be proposed, but there is no binding obligation to comply with it; it is a mere recommendation.[3]

The process of nomination being now complete, we can turn to the method of election. The Secretary-General of the League prepares a list of the candidates in alphabetical order, without indicating the source of their nomination, and submits this list to the Assembly and Council.[4] These two bodies then proceed independently of one another to elect, from among the names on the list, first the judges and then the deputy-judges.[5] It will be noticed that no express provision is made in the Statute as to the simultaneity or otherwise of the election in the two bodies. This formed the subject of discussion in the Sub-Committee of the Assembly in the course of its examination of the draft Statute, and an amendment providing for simultaneous election was rejected on the ground that it would make the necessary contact between the Council and Assembly impossible.[6] Nevertheless, when the first election came to be held the proceedings in the two bodies were held simultaneously,[7]

[1] See pp. 14-15 *supra*.

[2] Set out at p. 241 *infra*.

[3] See Report of Sub-Committee, Art. 6, p. 313 *infra*.

[4] See Art. 7, p. 242 *infra*. It seems clear from the provisions of the Article that no indication must be given of the source of any particular candidate's nomination, and this course has been followed in practice.

[5] See Art. 8, p. 242 *infra*.

[6] See Sub-Committee's Report, Art. 8, pp. 313-314 *infra*.

[7] See *Records of First Assembly, Plenary Meetings*, pp. 222-223, 235-252.

and, as has already been seen, no special difficulty was encountered.[1]

An important rule affecting the composition of the Court is laid down in Article 9 of the Statute,[2] which provides that "at every election, the electors shall bear in mind that not only should all persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world."

It is to be noticed that, unlike the recommendation made in Article 6,[3] mentioned above,[4] Article 9 creates a binding obligation. The object of the provision is well described in the report of the Jurists' Committee, from which it appears that the intention is not to refer to the various systems of international law which may exist; that would be opposed to the guiding principle upon which the establishment of a single Court for all nations is based, namely, the principle of the unity and universality of international law. The object in view is to secure representation of the national systems of legal education and outlook as well as the various civilizations, so that no matter what point of national law, or it may be national institutions or customs, is involved in a case, the Bench will be in a position fully to comprehend and appreciate it.

It is interesting to notice that the Court as now actually composed shows that the duty laid upon the Assembly and Council has been carried out.[5]

The election is made by absolute majority,[6] *i.e.* each candidate must, in order to be elected, receive a majority of all the votes cast, not merely more votes than any other candidate. Further, he must receive an absolute majority of votes both in the Assembly and in the Council.[7] It has been seen in the preceding chapter[8] how this ingenious and at first sight somewhat complicated system works in

[1] See pp. 15-18 *supra*.
[2] Set out at p. 242 *infra*.
[3] Set out at p. 241 *infra*.
[4] See p. 26 *supra*.
[5] See pp. 15-18 *supra*, and p. 281 *infra*.
[6] See Art. 10, p. 242 *infra*.
[7] See Art. 10, p. 242 *infra*.
[8] See pp. 15-18 *supra*.

practice. The two bodies hold separate and simultaneous sessions, at which the voting takes place by secret ballot. Successive ballots are held until the required number of selections have been made. Then the lists of successful candidates in each body are compared and those whose names appear in both are elected. It should be noticed that if more than one national of the same Member of the League is elected in this way, the election of the eldest of them is alone effective,[1] the other election or elections being regarded as null and void. This rule prevents any one country from securing a preponderating position in the Court, and also operates as an additional safeguard for representation being widely distributed.

In order to attain the necessary coincidence of choice between the Council and Assembly it is hardly to be expected that a single round of voting will be sufficient; and for this reason the Statute provides that if, after the first meeting in each body held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.[2] In other words, the series of ballots is repeated to such an extent as affords a reasonable opportunity of arriving at agreement between the two electoral chambers.

The procedure outlined above may be described as the normal method for the election of the judges and deputy-judges. From the account given in the preceding chapter of the first election it has been seen that this method was successful and sufficient for the purpose of filling 14 out of the total of 15 seats.[3]

But obviously a deadlock may occur, and must be provided for. The Statute does so in the following manner. If after the third meeting of the Assembly and Council the normal procedure has not resulted in the whole quota of judges, or deputy-judges, as the case may be, being elected, "a joint conference consisting of six members, three appointed by the Assembly and three by the Council,

[1] See Art. 10, second para., p. 242 *infra*. [2] See Art. 11, p. 242 *infra*.
[3] See pp. 15-18 *supra*.

may be formed at any time at the request of either body for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and Council for their respective acceptance." [1] It will be noticed that the setting-up of the joint conference does not take place automatically at the conclusion of the unsuccessful third meeting. It is left either to the Assembly or to the Council to propose its formation when they consider that a prolongation of the normal procedure is useless.

The joint conference acts as a commission of conciliation, its duty being to endeavour to select a name for submission to the Assembly and Council which will satisfy them both. It has no power to impose its choice upon them. The joint conference can make its recommendation by a majority if the name selected is among the list of candidates, but in order to facilitate the choice of a person acceptable both to the Assembly and Council, in the deadlock which has arisen in their endeavour to elect the judge from the list of candidates, the joint conference can go outside the list provided its choice of an extraneous name is unanimous.[2] This is the only case in which a candidate for election can be sought outside the body of candidates nominated by the national groups.[3] In the case of the joint conference appointed at the first election the members in fact agreed unanimously upon a candidate whose name appeared in the list of nominees.[4]

When the joint conference has submitted to the Assembly and Council the name or names which it has agreed upon, it remains for the electoral bodies to exercise their right of election. The Assembly and Council proceed to vote in the same way as before, except that they now have before them a candidature presented and endorsed by their own representatives. At the first election M. Beichmann, whom the joint conference had recom-

[1] See Art. 12, first para., p. 242 *infra*.

[2] See Art. 12, p. 243 *infra*.

[3] See Art. 7, p. 242 *infra*, and p. 26 *supra*.

[4] See *Records of Second Assembly, Plenary Meetings*, p. 281; and p. 18 *supra*.

mended, was adopted by 36 votes to 3 in the Assembly and unanimously in the Council.[1]

But what if the process of conciliation fails? The Statute has not overlooked this possibility. "If the joint conference is satisfied that it will not be successful in procuring an election" then the members of the Court already elected are given the task of filling the vacant seats by selection from the candidates who have obtained votes either in the Assembly or Council.[2] In the event of an equality of votes among the judges the eldest has a casting vote.[2] The words in inverted commas were introduced into the Statute by the Committee of the Assembly in amendment of the Jurists' Committee's text, with the object of enabling the joint conference to proceed to repeated nominations before abandoning the attempt to find a name upon which the Assembly and Council can agree.[3] It is plain that co-option by the members of the Court is provided for merely as a precaution to meet the remote chance of failure by the joint conference, and it will probably never need to be resorted to in practice.

Having ascertained how the members of the Court are appointed we pass to their term of office. The members of the Court are elected for nine years, but they are eligible for re-election.[4] Three considerations are involved in the duration of a judge's term of office:

(1) The vital matter of irremovability;
(2) Continuity of jurisprudence;
(3) The possibility of eliminating unsatisfactory judges.

The judges of an international Court, as much if not more than those of domestic tribunals, must be independent. They must not hold office at the pleasure of any power or authority whatever. At the same time, in the case of an international Court, some provision must be made for periodical renewals of the whole Court in order

[1] See *Records of Second Assembly, Plenary Meetings*, pp. 290-291.

[2] See Art. 12, third para., p. 243 *infra*.

[3] See Report of Sub-Committee, Art. 12, p. 314 *infra*; and Jurists' Draft Scheme, Art. 12, p. 291 *infra*.

[4] Art. 13, p. 243 *infra*.

to assure the proper distribution of representation. It is also needful to guard against the continued exercise by a judge of his functions when by reason of age he has become unfit to do so. These reasons weigh against life appointments, whereas the term of nine years, during which each member of the Court enjoys absolute security of tenure, except by the unanimous decision of his brethren,[1] is long enough to fulfil the essential conditions of independence and continuity of jurisprudence.

Although the judges' term is nine years they continue to sit until their places have been filled.[2] In other words if, for any reason, the election is delayed there is no vacation of office; the Court is always in being. Moreover, they continue to act in and finish any cases which they have begun to hear at the time of the expiration of their term, even after the appointment of a successor.[2] It should be noticed that it is laid down by Article 1 of the Rules of Court that the term of office of judges and deputy-judges commences to run on January 1 of the year following their election.[3]

Vacancies caused by death, removal, or resignation are filled by the same method as that laid down for the original election.[4] But the member elected to fill such a vacancy by replacing a member whose period of appointment had not expired holds office only for the remainder of his predecessor's term.[5] This is a point of some importance, which aroused considerable discussion in the course of the preparation of the Statute, when the alternative system of conferring upon the judges elected to fill casual vacancies the full term of nine years received strong support.[6] The necessity of affording to the various States free play in securing an equitable distribution of seats by means of a general election every

[1] See Art. 18, p. 244 and pp. 34-35 *infra*.

[2] See Art. 13, last para., p. 243 *infra*. See also p. 119 *infra*.

[3] See Art. 1, p. 261 *infra*.

[4] See Art. 14, p. 243 *infra*.

[5] See Art. 14, p. 243 *infra*.

[6] See *Procès Verbaux of the Proceedings of the Committee of Jurists*, pp. 464-471; *Report*, p. 714; *Records of First Assembly, Meetings of Committee*, pp. 347-349; Sub-Committee's Report, Art. 14, p. 314 *infra*.

nine years, however, was held to prevail over the gain to continuity and the other advantages of overlapping terms.[1]

It has already been stated that the members of the Court are divided into judges and deputy-judges. The function of the deputy-judges is to replace the judges when, for any reason, one or more of them are unable to be present. The order in which the deputy-judges are called upon to sit is determined firstly by priority of election and secondly by age, and is shown upon a list drawn up by the Court.[2] The Rules of Court define the principles upon which the list is drawn up[3] and make it clear that the deputy-judges are summoned in rotation throughout the list. If, however, a deputy-judge happens to be so far from the seat of the Court that, in the opinion of the President, a summons would not reach him in time the deputy-judge next in the list is summoned; nevertheless, the deputy-judge who has thus lost his turn must be called upon, if possible, the next time that the presence of a deputy-judge is required.[4] A deputy-judge who has begun a case shall be summoned again, if necessary out of his turn, in order to continue to sit in the case until it is finished.[4]

In the earlier part of this chapter an account has been given of the qualifications required for membership of the Court.[5] But it is clear that a man may possess these qualifications and yet hold some office or exercise some function which is incompatible with the position of an international judge. The problem to be solved was to reconcile the principle of independence of the members of the Court with the necessity of not shutting out the best men. In other words, whilst the holding of some political and other offices by the judges would obviously be undesirable, the net must not be cast so wide as to make the acceptance of a seat impossible for many of the leading figures in the legal world, such, for instance,

[1] See *Report of Jurists' Committee, Procès Verbaux of the Proceedings of the Committee*, p. 714; Report of Sub-Committee, Art. 14, p. 261 *infra*.

[2] See Art. 15, p. 243 *infra*.

[3] See Art. 2, p. 314 *infra*.

[4] See Art. 3, p. 262 *infra*.

[5] See pp. 23-24 *supra*.

as members of our own House of Lords. It is neither necessary nor desirable that a member of the Court should cut short all activities in his own country, provided they are not of such a nature as to interfere, or give rise to suspicion that they are likely to interfere, with the proper discharge of his judicial duties.

The solution finally adopted is embodied in Article 16 of the Statute, which runs as follows:—"The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court. Any doubt on this point is settled by the decision of the Court."

The language used in this Article is so vague and general that it may be permissible to look at the drafts and reports of the bodies which prepared the Statute, for the purpose of ascertaining what those bodies had in mind.[1] The text of the Jurists' Draft Scheme differs from Article 16 of the Statute as finally settled,[2] but in commenting upon this text the Jurists' Report states that members of Governments, diplomatists, civil servants, and legal advisers to Foreign Offices are ineligible, as well as representatives of a State in any capacity on the different organs of the League of Nations. The same Report and the Assembly Sub-Committee's Report[3] are in agreement in declaring that membership of a Parliament, and in particular of the House of Lords in England, is not incompatible with membership of the Court.

It is plain that the election of a person holding an incompatible office is not void. It is not a question of disqualification; the judge-elect has to decide whether he will accept his appointment as a judge and resign his other office, or retain the latter and decline the judgeship.[4]

[1] See Jurists' Committee's Draft Scheme, Art. 16, pp. 291-292 *infra*; Assembly Sub-Committee's Report, Art. 16, pp. 314-315 *infra*; and Assembly Committee's Report, p. 325 *infra*.

[2] See Draft Scheme, Art. 16, pp. 291-292 *infra*; and cf. Statute, p. 243 *infra*.

[3] See pp. 314-315 *infra*.

[4] See Jurists' Committee's Report, Art. 16.

It will be observed that the Article quoted above draws a distinction between the judges and the deputy-judges. The former are debarred by the exercise of an incompatible function from holding the office of judge, whereas the latter may retain their office as deputy-judge and are merely precluded from sitting as members of the Court whilst exercising the incompatible function. In both cases the Court itself decides any question that may arise. Mention may perhaps be made of the fact that the question whether his position as a Senator in Spain was incompatible with his acting as a judge was raised by M. Altamira and decided by the Court in the negative.[1]

A further point in regard to the same subject is made clear by the Statute, namely, that no member of the Court can act as agent, counsel, or advocate in any case of an international nature.[2] But here again the prohibition only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.[2] Similarly, no member of the Court may participate in the decision of any case in which he has previously taken an active part as agent, counsel, or advocate for one of the contesting parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.[3] In connection with both these matters it is again the Court itself which decides any question of doubt.[3]

There is only one way by which it is possible to dismiss a member of the Court, and that is by the unanimous decision of the other members.[4] It is well to remember that the expression "the other members" includes the deputy-judges as well as the judges. The Rules of Procedure adopted by the Court provide that before a member of the Court can be removed all his colleagues, both judges and deputy-judges, must be summoned to a meeting; the

[1] See *Publications of the Permanent Court of International Justice*, Series D, No. 2, pp. 10-12.

[2] See Art. 17, p. 244 *infra*.

[3] *Ibid.* Judges may also have to retire from a particular case for some special reason. See p. 41 *infra*.

[4] See Art. 18, p. 244 *infra*.

member affected is to be allowed to furnish explanations; the question is then discussed and a vote taken, the member in question not being present; it is only if this vote is unanimous that dismissal results.[1] The Report of the Committee of Jurists suggests that age or sickness affecting the physical vigour or intellectual powers of the members might amount to a cause of dismissal, but the condition of unanimity offers a firm safeguard against any abuse of the power, either under this head or as a result of possible political pressure.

Article 19 of the Statute provides that the members of the Court when engaged on the business of the Court shall enjoy diplomatic privileges and immunities.[2] This formula was framed by the Assembly Sub-Committee in amendment of that adopted by the Jurists' Committee, which provided for the enjoyment of diplomatic privileges and immunities by the members of the Court when outside their own country.[3] The object of the amendment was to enable the diplomatic privilege to be accorded even in the judge's own country, whilst limiting it in all countries to the occasions when he is engaged on the business of the Court. There were serious objections on the part of some members of the Sub-Committee to the extension in point,[4] but they were met by the Report making it clear that the "situation of judges in their own country should not be prejudiced by the solution adopted";[5] in other words, that it remains open to each State to determine the position within its territory of its own nationals who may be members of the Court. The only binding obligation undertaken by the parties to the Statute is to accord diplomatic privileges and immunities to the members of the Court, when engaged on its business, and outside their own country.

Every member of the Court before taking up his duties

[1] See Rules of Court, Art. 6, p. 263 *infra*.

[2] See p. 244 *infra*.

[3] See Art. 19, p. 292 *infra*; and Sub-Committee's Report, p. 315 *infra*.

[4] See *Records of First Assembly, Proceedings of Committees*, pp. 256-258.

[5] See Report, Art. 19, p. 315 *infra*.

makes a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.[1]

The provisions of the Statute referred to above deal with the election, term of office, and position of the judges. It now remains to consider the internal organization of the Court so constituted. This subject is dealt with by Articles 21-33 of the Statute,[2] supplemented by the provisions of the Rules of Court.[3]

The Court elects its President and Vice-President. Their term of office is three years, but they are eligible for re-election.[4] The President occupies an outstanding position. He directs the work and administration of the Court and presides at the meetings of the full Court.[5] His powers and duties in respect of particular matters will be noticed in connection with the procedure of the Court.[6] The Vice-President takes the President's place when he is unable to be present, or, if the presidency is vacant, until the appointment of the new President.[7] Both the President and Vice-President receive special remuneration.[8] The election of the first President took place at the preliminary session of the Court held on February 3, 1922, there being present all the judges, with the exception of M. Barboza, together with M. Yovanovitch, deputy-judge.[9] It was decided, for the purpose of this election, to take a preliminary vote, of which no record was to be made, followed by a final vote, both by secret ballot, the election to be decided by absolute majority on the final vote.[10] In the result, Dr. Loder was elected by 9 votes to 2.[11]

The election of the first Vice-President took place on February 7, 1922, by the same procedure, there being

[1] See Art. 20, p. 244 *infra*. For form of declaration, see Rules of Court, Art. 5, pp. 262-263 *infra*.

[2] Set out at pp. 244-248 *infra*.

[3] See pp. 261-270 *infra*.

[4] See Art. 21, p. 244 *infra*.

[5] See Rules of Court, Art. 10, p. 264 *infra*.

[6] See pp. 95-125 *infra*.

[7] See Rules of Court, Art. 11, p. 264 *infra*.

[8] See p. 285 *infra*.

[9] See *Publications of the Court*, Series D, No. 2, pp. 4-5.

[10] *Ibid.* p. 4.

[11] *Ibid.*

present, in addition to the members of the Court referred to above, M. Negulesco, deputy-judge. M. Weiss was elected by 7 votes to 5.[1]

The procedure adopted for the first election was necessarily provisional, inasmuch as the Court had not yet had the opportunity of drawing up its Rules under Article 30 of the Statute.[2] Article 9 of the Rules of Court[3] now contains the operative provisions governing the election of the President and Vice-President. After dealing with the various matters of detail which must be provided for, it lays down that the elections shall take place by secret ballot, and that the candidate obtaining an absolute majority of votes shall be declared elected.[4] It must be made clear that the election is made by the ordinary full Court, *i.e.* a Court consisting of eleven members, with a possible quorum of nine members, and not by a body consisting of (or to which must be summoned) all the judges and deputy-judges.[5] As already stated,[6] at the second election, held on September 4, 1924, M. Huber was elected President and M. Weiss Vice-President for the years 1925-27.

In case both the President and the Vice-President are unable to be present, or should both appointments be vacant at the same time, the judge who takes precedence by reason of priority of election, or in the case of election at the same session of the Assembly and Council of the League, by reason of age, performs the duties of President.[7] Similarly, after a new election of the whole Court and until such time as the President and Vice-President have been elected, the senior judge performs the duties of President.[7]

[1] *Ibid.* p. 26.

[2] See p. 247 *infra.*

[3] Set out at p. 264 *infra.*

[4] See Art. 9, p. 264 *infra.*

[5] See *Publications of the Court*, Series D, No. 2, pp. 173-174. Even without reference to the discussion there mentioned, it is clear that Article 9 of the Rules of Court contemplates election by the ordinary full Court, inasmuch as no reference is made to any other body. As to the full Court and its powers to act unless expressly provided to the contrary, see p. 42 *infra.*

[6] See p. 19 *supra.*

[7] See Rules of Court, Art. 13, p. 265 *infra.*

The Court appoints its Registrar,[1] whose duties are such as to give his office considerable importance in the Court's organization. The present Registrar, elected at the preliminary session of the Court held on February 3, 1922, is M. Hammarskjöld,[2] a distinguished lawyer formerly in the Swedish diplomatic service and the Secretariat of the League of Nations. The Rules of Court provide that the Registrar shall be elected by a majority of votes given by secret ballot from amongst candidates proposed by members of the Court.[3] His term of office is seven years, subject to re-election.[3] The Statute provides that the duties of Registrar shall not be incompatible with those of Secretary-General of the Permanent Court of Arbitration,[4] set up by The Hague Conventions of 1899 and 1907, but, as appears above, the Permanent Court of International Justice has not availed itself of the power to combine the two offices in the same person.

The general duties of the Registrar are laid down in Articles 18-26 of the Rules of Court,[5] and his further functions in regard to particular matters will be noticed in connection with the procedure of the Court.[6]

The Statute provides that the President and Registrar must reside at The Hague, the seat of the Court.[7] This condition is defined by the Rules of Court as residence within a radius of ten kilometres from the Peace Palace, and a main annual vacation in the case of the President not exceeding three months, and in that of the Registrar two months.[8]

It will be observed that residence at The Hague is not prescribed for the Vice-President or the other members of the Court. This subject aroused discussion in the Committee of Jurists[9] when it was urged, on the one hand,

[1] See Art. 21, p. 244 *infra*.
[2] See *Publications of the Court*, Series D, No. 2, p. 7.
[3] See Art. 17, p. 266 *infra*.
[4] See Art. 21, p. 244 *infra*.
[5] Set out at pp. 266-268 *infra*.
[6] See pp. 95-125 *infra*.
[7] See Art. 22, p. 245 *infra*.
[8] See Arts. 12 and 19, pp. 264, 266-267 *infra*.
[9] See *Procès Verbaux of the Proceedings of the Committee*, pp. 186-190.

that the Court in order to be truly permanent must consist of judges resident at its seat and thus ready to hear urgent cases at any moment, and on the other hand, that by cutting off the judges from all possibility of service in their own countries the tendency would be to preclude the best men from accepting the position. The view was also entertained by some members of the Committee that the Court, at least at the beginning of its career, would have very little to do.[1] The result of weighing the opposing arguments was to limit the obligation to reside at The Hague to the President, the other members being subject only to be summoned to attend the sessions of the Court.[2] It will be seen from the account given hereafter of the actual work of the Court[3] that whilst the number of cases submitted to it has been considerable, no difficulty has arisen in assembling the requisite number of judges, even for urgent matters. It does not, however, seem altogether unlikely that the volume of work which the Court will be called upon to undertake in the future may grow to be such that residence at the seat of the Court by its ordinary members for the greater part of the year might become necessary. There is, of course, nothing in the Statute to preclude them from establishing their residence there.

Article 23 of the Statute[4] provides that "a session of the Court shall be held every year. Unless otherwise provided by rules of Court this session shall begin on the 15th of June and shall continue for so long as may be deemed necessary to finish the cases on the list. The President may summon an extraordinary session of the Court whenever necessary."

Article 27 of the Rules of Court provides that in the year following a new election of the whole Court the ordinary annual session shall commence on the 15th of January, and further that if the day fixed for the opening of any session is a holiday the session shall be opened on the following working day.[5] There is, therefore, a single

[1] *Ibid.*; and *Report*, p. 718.
[2] See Jurists' Committee's Report, *ibid.* p. 718.
[3] See pp. 126-218 *infra*.
[4] See p. 268 *infra*.
[5] *Ibid.*

ordinary session in each year, the commencing date of which is definitely fixed: normally June 15, and after the general election of the members of the Court held every nine years, January 15. The date June 15 was selected because on the balance of convenience, having regard to the circumstances prevailing in the different countries of the world, the period between that date and October 15 was the least active of the year, and therefore the best suited for attendance by the judges.[1] The purpose of fixing January 15 in the case of the session following a general election of the whole Court is to enable the members, some at least of whom will probably be elected for the first time, to meet at the earliest available opportunity (the election being held, according to present practice, in the autumn) in order to elect the President and Vice-President and generally prepare for their future work in common.

As indicated above, however, the work of the Court is not confined to a single annual session; the President summons an extraordinary session whenever it is necessary to do so. It may be mentioned that it has, in fact, been found necessary to hold two extraordinary sessions, one in January, 1923, and the other in November, 1923, to consider urgent questions submitted to the Court for advisory opinion by the Council of the League.[2]

Each session of the Court continues, in accordance with Article 23 of the Statute,[3] until the cases on the list have been disposed of. The list is prepared by the Registrar under the responsibility of the President.[4] The list for each session contains all questions submitted to the Court for advisory opinion and all cases in regard to which the written proceedings are concluded,[5] in the order in which the initial submission of the question or case was received

[1] See *Procès Verbaux of the Proceedings of the Committee of Jurists*, p. 187; *Records of the First Assembly, Meetings of the Committees*, p. 358.

[2] See pp. 144, 198 *infra*. As to the advisory jurisdiction and procedure, see pp. 67-71, 121-125 *infra*. Since going to press a further extraordinary session has been held in January, 1925.

[3] Set out at p. 245 *infra*.

[4] See Rules of Court, Art. 28, p. 269 *infra*.

[5] See pp. 102-104 *infra*.

by the Registrar.[1] The Court itself decides whether questions submitted, or cases in which the written proceedings are concluded, during the course of the session shall be added to the current list.[1]

Article 24 of the Statute[2] provides that if for some special reason a member of the Court considers that he should not take part in the decision of a particular case he shall so inform the President. Similarly, if the President considers that for some special reason one of the members of the Court should not sit in a particular case he shall give him notice accordingly.[3] If in either of these alternatives the member of the Court and the President disagree the point is settled by the decision of the Court.[3] This Article is designed to meet the eventuality of what may be called a particular incompatibility between the judge's judicial position and his extraneous activities, other than the cases contemplated in Article 17.[4] An illustration would be afforded by the coincidence that one of the persons involved in an international incident submitted to the Court was a relative of the judge; or again, possibly, that a judge had expressed in a work or article written by him strong views upon the very point in issue in a case. Whether the latter example would involve the obligation to retire would, of course, depend upon the particular circumstances. The Report of the Assembly Sub-Committee in commenting on Article 24 states that the circumstances contemplated are not merely such as render it impossible for a judge to perform his duties, but such as impose upon him a moral duty to retire.[5] The decision of the Court in a disputed case could be given by a majority, this being the general method under the Statute of arriving at decisions in the absence of express stipulation to the contrary.[6]

[1] See Rules of Court, Art. 28, p. 269 *infra*.

[2] Set out at p. 245 *infra*.

[3] See Art. 24, p. 245 *infra*.

[4] Set out at p. 244 *infra*; and see p. 34 *supra*.

[5] See Report, Art. 24, p. 316 *infra*.

[6] See Statute, Art. 55, p. 253 *infra*. Cf. Art. 18, p. 244 *infra*; and see pp. 34, 35.

The full Court sits in all cases and for all purposes, except when it is expressly provided to the contrary.[1] The full Court consists normally of eleven members, *i.e.* the eleven judges, or, in case one or more of them are unable to be present, the available judges, together with such deputy-judge or deputy-judges as are required to replace the absent judge or judges. If, however, eleven members of the Court are not available, a quorum of nine suffices to constitute the Court.[2] The Rules of Court provide that if at any sitting of the Court it is impossible to obtain the prescribed quorum the Court shall adjourn until the quorum is obtained.[3]

It is evident that the number of the judges is a matter of great importance from the two distinct standpoints of the efficiency of the Court and the representation of the different States, civilizations, and legal systems. In order to be practically efficient the Court must not be unwieldy, but, on the other hand, it would not have been possible to restrict it to a very small number of judges without destroying its world-wide character. The number of eleven, with a possible quorum of nine, gives reasonable satisfaction to both principles. From the point of view of efficiency, although, no doubt, more numerous than the Courts to which we are accustomed in England, it must not be forgotten that large Courts are not unknown even under our own domestic system, that America furnishes an illustrious precedent in the Supreme Court of the United States, which is composed of nine judges, and that in France the Court of Cassation habitually sits in three divisions of fifteen judges each and occasionally in a united body of forty-five members. A valuable principle is established by the rule making the full Court the normal instrument of jurisdiction. In the Jurists' Committee proposals were made that the Court should sit in divisions either with or without liberty by the parties to select the division before which their case

[1] See Art. 25 of Statute, p. 245 *infra*.

[2] *Ibid*.

[3] See Rules of Court, Art. 30, p. 269 *infra*.

should be taken.[1] This system was rejected in favour of making the full Court, and the full Court alone, the effective tribunal, subject to the special and exceptional cases about to be mentioned. It is unnecessary to emphasize the wisdom of this decision and its value in assuring continuity of jurisprudence as well as in safeguarding the true judicial character of the Court.

Articles 26 and 27 of the Statute, which were introduced by the Assembly Sub-Committee on the proposal of Great Britain, provide for the formation by the Court of special chambers for hearing cases relating to Labour, and Transit and Communications respectively.[2] Although broadly similar, there are differences in the system laid down for the two classes of cases, which make it advisable to deal with them separately.

"Labour cases" within the meaning of Article 26 are primarily those referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Peace Treaties,[3] but they are not necessarily confined to those cases; there may, it would seem, be other international disputes arising out of Labour questions.[4] It will be remembered that the Labour clauses of the Peace Treaties set up an international labour organization affiliated to the League of Nations, which, *inter alia*, is entrusted, through the body known as the Conference, with the task of making recommendations and framing draft conventions relating to the conditions of labour.[5] In connection with questions which may arise as to the fulfilment or non-fulfilment by individual States of their obligations in regard to these recommendations and draft conventions, as well as in all questions or disputes relating to the interpretation of the Labour clauses themselves or subsequent conventions concluded in pur-

[1] See *Procès Verbaux of the Proceedings of the Committee*, pp. 177, 184.

[2] Arts. 26 and 27 are set out at pp. 245-247 *infra*.

[3] *i.e.* Treaty of St. Germain, Part. XIII; Treaty of Trianon, Part XIII; and Treaty of Neuilly, Part XII.

[4] See Art. 26, first para., p. 245 *infra*; and Sub-Committee's Report, Art. 26, p. 316 *infra*.

[5] See Treaty of Versailles, Art. 405.

suance thereof, the Permanent Court of International Justice is given "compulsory" jurisdiction,[1] *i.e.* the parties to the Labour clauses consent in advance to allow any one of their number to bring the matter before the Court without necessity for further agreement in the submission of the particular case.

The procedure laid down by the Statute for Labour cases is the following[2]:—

The Court appoints every three years a special chamber of five judges, and in addition two judges selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the full Court sits. On all occasions, however, whether the special chamber or the full Court is the tribunal, the judges in trying Labour cases will be assisted by four technical assessors sitting with them, but without the right to vote. The technical assessors are chosen for each particular case from a list of "Assessors for Labour cases" composed of two persons nominated by each member of the League and an equivalent number nominated by the Governing Body of the Labour Office.[3] The Governing Body must divide its nominees equally between representatives of workers and employers, whose names appear in the list of persons of industrial experience mentioned in Article 412 of the Treaty of Versailles. The appointment of the assessors for each case is made by an absolute majority of votes either by the Court or by the special chamber which has to deal with the case,[4] regard being had in choosing the assessors to ensuring a just representation of the competing interests.[5] The President of the Court is charged with the duty of obtaining all information which might be helpful to the Court in selecting the assessors in each case.[4]

[1] *Ibid.*, Art. 415, 416-420, 423. [2] See Statute, Art. 26, pp. 245-246 *infra*.

[3] This Body consists of 24 persons, 12 representing Governments, 6 representing employers, and 6 representing employees; see Treaty of Versailles Art. 393.

[4] See Rules of Court, Art. 7, p. 263 *infra*.

[5] See Statute, Art. 26, second para., pp. 245-246 *infra*.

The technical assessors in Labour cases are granted from the funds of the Court a daily subsistence allowance of fifty Dutch florins during the period for which their functions oblige them to reside at the place at which the session is held, unless they habitually reside there, or if they reside at such place, a daily subsistence allowance of twenty-five florins; further, the necessary travelling expenses of assessors are refunded to them out of the funds of the Court.[1]

In Labour cases the International Labour Office[2] is at liberty to furnish the Court with all relevant information, and for this purpose the Director[3] of that Office shall receive copies of all written proceedings.[4] It is to be observed that this is the only instance in which the Statute confers the right of taking part in proceedings before the Court upon any entity other than States.[5] The right is, however, limited to giving information, and does not enable the International Labour Office to occupy the position of a party.

The second group of cases for which a special procedure is laid down is, as mentioned above, that relating to transit and communications.[6] The cases particularly contemplated are those referred to in Part XII (Ports, Waterways, and Railways) of the Treaty of Versailles and the corresponding portions of the other Peace Treaties,[7] whereby "compulsory" jurisdiction is conferred upon the Court,[8] but

[1] See Resolution of Third Assembly of the League of Nations, dated Sept. 23, 1922, set out at pp. 285-286 *infra*. No express provision is contained in the Statute as to the remuneration of technical assessors, but the Assembly took this decision on the proposal of the Council, which reported in its favour after receiving a communication from the Court recommending the step. See Report to and Resolution of Council of July 17, 1922 (A. 27, 1922, V).

[2] See Treaty of Versailles, Art. 388, 392 and 393.

[3] See Treaty of Versailles, Art. 394.

[4] See Statute, Art. 26, last para., p. 246 *infra*.

[5] The Rules of Court provide for notice of and information upon advisory opinions being given to and by international organizations. See Art. 73, p. 280 *infra*, and pp. 123, 124 *infra*.

[6] See Statute, Art. 27, p. 246 *infra*.

[7] *i.e.* Treaty of St. Germain, Part XII; Treaty of Trianon, Part XII; and Treaty of Neuilly, Part XI.

[8] See Treaty of Versailles, Art. 336, 337, and 386.

here again these are not necessarily the only cases included in Article 27 of the Statute; all international disputes relating to transit and communications are subject to its provisions.[1] The procedure adopted is broadly similar to that applicable to Labour cases, with the exception that the technical assessors do not sit as of course but only when so desired by the parties or decided by the Court. This distinction between the procedure in the two groups of cases was introduced in the course of the final consideration of the draft Statute by the plenary meeting of the Assembly, when it was pointed out that transit and communications cases would not in their legal aspect necessarily bear a technical character, and, moreover, did not involve the domestic and sociological elements attaching to Labour cases.[2]

Technical assessors in transit and communications cases, if they sit by virtue of a decision of the Court, receive out of the funds of the Court the same payment as assessors in Labour cases.[3] If, however, they sit at the request of the parties their allowances and travelling expenses are borne by the parties in accordance with rules made by the Court.[4]

The special chambers provided for the hearing of Labour cases and transit and communications cases may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.[5] This is the only instance in which sessions elsewhere than at the seat of the Court are contemplated. The provision, which was introduced by the Assembly Sub-Committee on the proposal of Great Britain, is accompanied by the comment that it is assumed that the Court may make it incumbent upon the parties to defray the expenses of the change of place.[6]

[1] See Art. 27, p. 246 *infra*, and Report of Assembly Sub-Committee, Art. 27, p. 317 *infra*.

[2] See *Records of First Assembly*, *Plenary Meetings*, pp. 498-499.

[3] See p. 45 *supra*, and Resolution, pp. 285-286 *infra*.

[4] See Resolution, p. 286 *infra*. The rules in question are set out on pp 286-287 *infra*.

[5] See Statute, Art. 28, p. 247 *infra*.

[6] See Sub-Committee's Report, p. 318 *infra*.

The Statute provides for the formation of a third chamber of the Court, viz.: the Chamber of Summary Procedure, with a view to the speedy despatch of business. It is composed of three judges (with two substitutes) elected annually by the full Court by absolute majority.[1] This Chamber may hear and determine cases by summary procedure at the request of the contesting parties.[2] Its jurisdiction only arises by virtue of agreement between the parties to have recourse to it.[3]

Article 30 of the Statute[4] imposes and confers upon the Court the duty and power of framing rules for regulating its procedure, and in particular summary procedure. Some of these rules in so far as they affect the internal organization of the Court have already been referred to, but the subject of procedure properly so-called will be dealt with in a later chapter.[5] Article 30 is mentioned here as one of the provisions of the Statute calling for notice in connection with the organization of the Court by reason of its bestowal of an important power upon the Court itself.

We now turn to one of the crucial points in the constitution of the Court: the question of the participation of judges of the nationality of the parties. This subject was exhaustively discussed by the Jurists' Committee.[6]

The broad question that arose was whether, on the one hand, parties to cases before the Court were to be entitled to have a member of their own nationality on the Bench, or, on the other hand, the judges of the nationality of the parties should retire from hearing a case involving their own country. It will be appreciated that there are three possible combinations to be considered: (1) there may be a judge of the nationality of each party on the Bench, or (2) of only one of the parties, or (3) of neither party.

[1] See Statute, Art. 29, p. 247 *infra*, and Rules of Court, Art. 14, p. 265 *infra*.

[2] See Art. 29, p. 247 *infra*.

[3] See Rules of Court, Art. 68, p. 279 *infra*.

[4] Set out at p. 247 *infra*.

[5] See Chapter IV. pp. 95-125 *infra*.

[6] See *Procès Verbaux of the Proceedings of the Jurists' Committee*, pp. 168-174, 197-200, 221-222, 529-539, 575-577, 614.

Four methods of dealing with the problem were advanced: (1) that the composition of the Court should remain unaltered no matter whether one or both of the parties are represented or not; (2) that the judge belonging to the nationality of a party should retire from the case; (3) that a national judge should be appointed *ad hoc* to sit, where the party would otherwise be unrepresented on the Bench; (4) that a national assessor should be appointed *ad hoc* with advisory powers, but no vote upon the decision of the case. The first method embodies the ideal conception of a purely judicial tribunal conforming to the type of domestic law courts. Logically it has much to recommend it, inasmuch as by Article 2 of the Statute[1] the Court is a body of independent judges elected regardless of their nationality, and, moreover, bound by a solemn declaration to act impartially.[2] The fact that this solution was not adopted must not, however, be regarded as a surrender of the judicial conception of the Court. The principles applicable to national tribunals do not extend integrally to an international Court—some modifications are involved by the differences inherent in the nature of their respective functions. The parties before the international Court are sovereign States; in order that its decisions should be effective they must be not only just in themselves but acceptable to the public conscience and opinion of the peoples of the States concerned; it is not sufficient that justice should be done, it must also appear to have been done. For this purpose, the presence of judges belonging to the nationality of the parties is essential. Their presence will not only inspire confidence in the peoples of the litigating States, it will enable the point of view of those States to be fully presented and understood. If, as has happened in the past,[3] and will without doubt occur in future, the national judge concurs in a decision adverse to his own country, the force of the judgment is increased tenfold. But what is perhaps most important of all, whether the national judge assents to or dissents from the decision, he

[1] Set out at p. 240 *infra*. [2] See Art. 20, p. 244 *infra*.

[3] *e.g.*, Sir R. Webster in the Atlantic Fisheries Arbitration.

is enabled, as a member of the Court, to shape the form of the judgment so that it may avoid, as far as possible, wounding national susceptibilities. It was considerations of this kind which weighed with the Committee of Jurists in recommending the inclusion, in every litigation submitted to the Court, of judges representing the nationality of the parties,[1] and it is submitted that the adoption of this principle in the Statute is calculated to strengthen the position of the Court as an effective instrument for the judicial settlement of international disputes. The provisions of the Statute dealing with this subject are contained in Article 31,[2] which covers the ground in five short paragraphs as follows:—

(1) "Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court."

(2) "If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5."[3]

(3) "If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of them may proceed to select or choose a judge as provided in the preceding paragraph" (*i.e.* select a deputy-judge if there be one of its nationality or if not choose a judge, preferably from the candidates nominated by the national groups[4]).

These three paragraphs lay down the method to be followed in each of the three possible alternatives that may arise in the composition of the Court.

The following paragraphs of Article 31 are supplementary:—

(4) "Should there be several parties in the same interest

[1] See Jurists' Committee's Report, *Procès Verbaux of the Proceedings of the Committee*, pp. 720-722.

[2] Set out at pp. 247-248 *infra*.

[3] Set out at p. 241 *infra*.

[4] See Art. 4, set out at p. 241 *infra*, and pp. 24-26 *supra*.

they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court."

This provision is inserted to meet the event where parties are jointly interested in a given case. This can occur either by two or more States joining on one side or the other in the submission of a dispute to the Court, or by subsequent intervention under Article 62 and 63 of the Statute.[1] It is, however, to be observed in regard to intervention under those Articles that the interest of the intervening State need not be common to that of either existing party. In that event it would appear that under the terms of Article 31 it would be open to the third State to avail itself of the right to have a judge of its nationality upon the Bench.[2]

(5) "Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, and 24 of this Statute.[3] They shall take part in the decision on an equal footing with their colleagues."

This paragraph places the national judges summoned *ad hoc* on an equality with the ordinary judges both as respects their qualifications, incompatibilities, and disabilities on the one hand[4] and their powers and duties on the other.

Before leaving the subject of the national judges, reference must be made to the supplemental provisions laid down in the Rules of Court. It is there provided (1) that the national judges chosen from outside the Court under Article 31 of the Statute shall take precedence after deputy-judges in order of age;[5] (2) that in cases in which one or more parties are entitled to choose *ad hoc* a judge of their nationality the full Court may sit with a number of judges

[1] Set out at p. 254 *infra*; and see pp. 110-113 *infra*.

[2] This view is borne out by Art. 4 of the Rules of Court, set out at p. 262 *infra*.

[3] These Arts. are set out at pp. 241, 243, 244 and 245 respectively.

[4] See pp. 23, 32-34, 41 *supra*.

[5] Rules of Court, Art. 2, p. 261 *infra*.

exceeding eleven[1] (its normal number[2]); (3) that when the Court has satisfied itself, in accordance with Article 31 of the Statute, that there are several parties in the same interest and that none of them has a judge of its nationality upon the Bench, the Court shall invite them, within a period to be fixed by itself, to select by common agreement a deputy-judge of the nationality of one of the parties, should there be one; or, should there not be one, a judge chosen in accordance with the principles of the above-mentioned Article.[3] Should the parties have failed to notify the Court of their selection or choice when the time limit expires, they shall be regarded as having renounced the right conferred upon them by Article 31.[4] (4) The Rules of Court, following the terms of the last paragraph of Article 31 of the Statute,[5] require the national judges to make the same solemn declaration as the permanent members of the Court.[6]

It may be well to point out that Article 31 of the Statute has no application to advisory cases.[7] When a dispute or question is referred to the Court for advisory opinion by the Council or Assembly of the League there are no "contesting parties" within the meaning of Article 31, and a State interested in the dispute or question has no right to representation on the Bench.[7]

Article 32 of the Statute[8] deals with the remuneration of the judges, deputy-judges, national judges, and registrar. Appendices 7 and 8[9] contain the Resolutions of the Assembly of the League fixing the salaries and allowances of the judges and the allowances of the deputy-judges and national judges in pursuance

[1] *Ibid.*, Art. 4, p. 262 *infra*.

[2] See Statute, Art. 3 and 25, pp. 241 and 245 respectively, and p. 42 *supra*.

[3] Rules of Court, Art. 4, p. 262 *infra*.

[4] *Ibid.*

[5] Set out at p. 248 *infra*; and see pp. 35-36 *supra*.

[6] Rules of Court, Art. 5, pp. 262-263 *infra*.

[7] As to the Advisory Jurisdiction, see pp. 67-71 *infra*. For actual cases illustrating the principle stated in the text, see pp. 156, 175, 190, 198, 213 *infra*.

[8] Set out on p. 248 *infra*.

[9] See pp. 283-286 *infra*.

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of this Article. The salary of the registrar, as determined by the Council, begins at 22,000 florins per annum and rises by annual increments of 1250 florins to the sum of 27,000 florins.[1] No regulations have so far been made, under the last paragraph of Article 32, in regard to pensions. It may be pointed out that this paragraph was amended by the Assembly Sub-Committee so as to leave the question of pensions open.[2]

The expenses of the Court are borne by the League of Nations in the manner decided by the Assembly on the proposal of the Council.[3] Besides the remuneration of the members of the Court and the Registrar these expenses include the payments made to the staff, the cost of printing the various collections of documents included in the publications of the Court,[4] and other necessary expenditure.

For the year 1923 the expenses of the Court amounted to 935,625.70 Dutch florins[5] (about £77,270), and the share of Great Britain, under the apportionment decided upon by the Assembly, amounted to about 94,145 florins,[6] or, £7,775. The budget of the Court for the year 1924 was approximately the same as that of the previous year.[7]

The expenses of the Court are, of course, distinct from the costs of parties to cases before it. These are borne in the manner provided by Article 64 of the Statute.[8] It is to be noticed that parties as such make no contribution to the Court's expenses, by way of fees or otherwise.[9]

[1] See *League of Nations Official Journal*, 3rd year, No. 11, (Part II.), p. 1162, Minute 737.

[2] See Report, Art. 32, p. 318 *infra*; and cf. Jurists' Draft Scheme, Art. 29, p. 294 *infra*.

[3] See Statute, Art. 33, p. 248 *infra*.

[4] As to these publications, see p. 117 *infra*, footnote 6.

[5] See *Budget of the League of Nations for* 1924 (C. 668, M. 268, 1923 X), p. 72.

[6] See Report on Allocation of Expenses (A. 154, 1922 X).

[7] See *Budget of the League for* 1924, pp. 70-76.

[8] Set out at p. 254 *infra*; and see pp. 119-120 *infra*.

[9] See, however, p. 58 *infra*, as to non-members of the League.

III

JURISDICTION OF THE COURT

The word "jurisdiction" is adopted here, in preference to "competence," which appears in the title to Chapter II. of the Statute[1] and is the expression habitually used on the Continent, because it is the term proper to Anglo-Saxon systems of law and conveys the conception in question more accurately in our language.

The subject of the present chapter is the central and vital point in the constitution of the Court, for the scope and limits of its jurisdiction determine the Court's sphere of action, and to a great extent, therefore, its usefulness and value. The provisions of the Statute dealing with jurisdiction fall under three heads: Parties (Articles 34 and 35[2]); Subject matter (Articles 36 and 37[3]); and Law to be administered (Article 38[4]).

Article 34 provides that only States or Members of the League of Nations can be parties in cases before the Court.[5] This defines the jurisdiction *ratione personæ*. The fundamental rule laid down is that States and not individuals are the parties with which the Court alone can deal. Private persons, whether natural or corporate, are excluded from the right to present themselves as parties in any case. It is thus impossible for the Court to entertain a suit brought by an individual or corporation in respect of any claim or matter whatever either against his or its own State or a foreign State, and this absence of jurisdiction could not be cured by consent to the submission on the part of the

[1] See p. 248 *infra*.
[2] Set out at pp. 248-249 *infra*.
[3] Set out at p. 249 *infra*.
[4] Set out at p. 250 *infra*.
[5] See Art. 34, p. 248 *infra*.

State. The exclusion extends to sovereigns and rulers, ex-sovereigns, public bodies and officials, and generally all *personæ* other than States.

On the other hand, it is perfectly open to a State to appear on behalf of a private person (including a corporation), at least if such person is one over whom it has a right of protection according to international law, *e.g.* in addition to its own nationals, a national of a protectorate, or of a country subject to a mandate. Further, it must be remembered that under a number of treaties made in connection with the peace settlement the States which are members of the Council of the League are given the right and duty of protecting minorities in certain countries, and in connection therewith differences can be referred to the Permanent Court of International Justice.[1] In a case arising under one of these treaties it could not, of course, be objected that the State or States acting on behalf of one or more members of a minority was improperly representing the individual or individuals in question. If a State took it upon itself to act on behalf of a person whom it was not internationally entitled to represent it is submitted that it would be open to the other party to raise the objection before the Court, which would have power to decide the point as one of the issues in the case.[2]

It will have been noticed that Article 34 refers to States *or Members of the League of Nations* as the parties competent to appear before the Court. The distinction apparently drawn between the two categories is at first sight somewhat puzzling, but it seems clear that the explanation lies in the fact that the four great British overseas Dominions and India being Members of the League, a doubt was felt by those who drafted the Statute as to whether they could be strictly described, in international law, as States.[3] It is these Members of the League (to

[1] See pp. 72-75 *infra*.

[2] See Jurists' Committee's Report, *Procès Verbaux of the Committee*, pp. 722-724.

[3] See *Records of First Assembly, Meetings of the Committees*, p. 378, and Sub-Committee's Report, Art. 34, pp. 318-319 *infra*.

which must now be added the Irish Free State) and not the Assembly, Council, Secretariat, or any other organ of the League which are referred to. The last-mentioned bodies are not "Members of the League" within the meaning of the Article, and they can never appear before the Court as parties.[1] It follows from what has just been stated that so far as the Statute is concerned there is nothing to prevent the Court from entertaining a dispute between Great Britain and one of the British Dominions, or between a Dominion and a foreign Power, provided such dispute were submitted to the Court by mutual agreement.[2]

A question might arise as to whether a protected State, which retains its identity as a *persona* in international law, or a State subject to the category of Mandates known as Mandate A, was entitled to take part in proceedings before the Court as a party. It is respectfully submitted that the question should be answered in the affirmative. Provided that the conditions in regard to the reference of disputes required to give jurisdiction to the Court are fulfilled[2] it is submitted that the more or less dependent status of such States would not of itself debar them from access to the Court. Article 34 refers to "States" merely, not to "fully sovereign and independent States." This view, moreover, seems to be confirmed by the fact that the Court is open to the Dominions. In practice, however, a protected State would no doubt appear through the protecting Power acting in its name and on its behalf. It may, perhaps, be added that two or more States can, of course, appear before the Court as joint parties, as indeed has actually occurred in practice.[3]

Article 35 of the Statute[4] deals with the distinction

[1] This is plain from the language of the Article and the constitution of the League, but it was expressly recognized by the Council and the Assembly Sub-Committee. See *Records of First Assembly, Meetings of the Committees*, pp. 475 and 378. The procedure in Advisory Cases is no exception to this rule; see p. 123. Nor is the position of the International Labour Office in Labour cases; see p. 45 *supra*.

[2] See p. 61 *infra*.

[3] See the case of the s.s. *Wimbledon*, pp. 164-175 *infra*.

[4] Set out at pp. 248-249 *infra*.

that must be made between the right of access of States which are Members of the League or original signatories of the Covenant, on the one hand, and non-members on the other. The Article provides that "the Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant." This means that all Members of the League, whether present or future,[1] are entitled by virtue of their membership to have access to the Court without the necessity of fulfilling any condition other than ratification of the Protocol of Signature of the Statute.[2] The same privilege is extended to the United States of America, which is the only State now included in the phrase: "and also to States mentioned in the Annex to the Covenant." The Court is therefore "open" to the United States, notwithstanding that it is not a Member of the League, at any time upon signature and ratification of the Statute. It may perhaps be pointed out that a curious result might conceivably follow from this provision, viz.: if a Member of the League mentioned in the Annex to the Covenant were to retire from the League it would continue to enjoy the unconditional right of access, whereas if a Member of the League not mentioned in the Annex were to retire from the League it would forfeit such right.

The position of States other than those that are Members of the League or mentioned in the Annex (hereafter referred to as non-member States) is defined as follows:— "The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions[3] place the parties in a position of inequality before the Court."[4] There are a number of matters the decision of which is referred to the Court by the treaties made in connection with the peace

[1] See Sub-Committee's Report, Art. 35, p. 319 *infra*.

[2] See Resolution concerning the establishment of the Court, para. 3, p. 240 *infra*.

[3] This word refers to the "conditions" mentioned at the beginning of the sentence.

[4] See Art. 35, p. 249 *infra*.

settlement, and involving as interested parties States at present outside the League, and, in particular, Germany. An example is afforded by Part XII (Ports, Waterways, and Railways), Articles 336, 337, and 386 of the Treaty of Versailles.[1] In these cases the special provisions made exclude the possibility of any conditions being imposed upon the non-member State's access to the Court. As to the conditions applicable in other cases, they are laid down by a Resolution of the Council, dated May 17, 1922, which is of a general and comprehensive nature. The resolution is reproduced in the Appendix,[2] but it may be convenient to summarize it briefly here. The Court is open to non-member States on condition that they deposit with the Court a declaration accepting the jurisdiction of the Court and undertaking to carry out its decision in full good faith and not to resort to war against a State complying therewith. The declaration may be either *particular*, *i.e.* in respect of a given dispute or disputes already in being; or *general*, *i.e.* in respect of all disputes, or of a particular class of disputes either already in being or which may arise in future. The Resolution then deals with the further possibility of a general declaration accepting compulsory jurisdiction, which will be referred to below,[3] and finally provides that all questions as to the validity or effect of a declaration made as aforesaid shall be decided by the Court. This Resolution gives full effect to the principle laid down by Article 35 of the Statute that non-member States must not be placed in a position of inequality before the Court. Indeed, it can be fairly said that its effect is to open the Court to these States upon the single condition that they accept the same obligations as Member States, for it will be noticed that the undertaking imposed by the Resolution upon the non-member States to carry out the Court's decision and not to resort to war against a State complying therewith is identical with the obligation under-

[1] A case under Art. 386 has actually come before the Court. See the s.s. *Wimbledon*, pp. 164-175 *infra*.

[2] See pp. 287-288 *infra*.

[3] See pp. 86-89 *infra*.

taken by Members of the League under Article 13 of the Covenant.[1]

One more point is covered by Article 35 of the Statute, viz.: as to the liability to contribute to the Court's expenses. It is provided by the last paragraph that "when a State which is not a Member of the League is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court."[2] It will be observed that this liability extends to States which, not being Members of the League, are mentioned in the Annex to the Covenant. Thus, if the United States were to avail itself of the right of access to the Court conferred by the first part of Article 35, it would be subject to the obligation arising under the last paragraph.

Articles 36 and 37 of the Statute[3] deal with substantive jurisdiction: they define the scope and limits of the Court's jurisdiction as regards the cases and disputes that can be brought before it for determination.

This subject, as was recognized all through the preparatory work leading up to the creation of the Court, is the fundamental question once the preliminary difficulty of constituting the Court has been disposed of. It received anxious consideration, was exhaustively discussed, and aroused widely divergent opinions. An outline of the attitude taken towards it at the various stages in the development of the scheme for the establishment of the Court has been given in Chapter I,[4] but in view of the importance of the matter it is proposed to deal with it a little more fully here, for in order to appreciate the solution actually adopted it seems relevant to consider the nature of the problem and the way in which it was approached. Where an authority designed to adjudicate exclusively between States is in question it is plain, as has already been pointed out,[5] that the source of jurisdiction can only be found in consent by the parties to resort to the tribunal.

[1] See Art. 13, past para., p. 232 *infra*.

[2] See Art. 35, p. 249 *infra*. As to the contribution of Member States to the expenses of the Court, see p. 52 *supra*.

[3] Set out at p. 249 *infra*.

[4] See pp. 6-7, 8-9, 10-11, 12 *supra*.

[5] See p. 6 *supra*.

There exists no superior power capable either in fact or law of creating a jurisdiction or imposing resort to it. But upon the foundation of consent two systems of jurisdiction can be built; they can be combined in various degrees and the distinction between them becomes more or less clearly marked according as one element or the other predominates, but in their extreme form they can be contrasted as follows: one system limits jurisdiction to particular disputes submitted to the tribunal by an agreement made *ad hoc* after the dispute has arisen; the other is a system whereby a number of States agree by means of a single general convention to confer jurisdiction in all disputes which may arise between them upon a given tribunal and to allow the reference of each particular dispute to the tribunal at the instance of either party to the dispute, *i.e.* "unilateral arraignment."

The latter system is conveniently, but not really accurately known as "compulsory jurisdiction," and the former can, perhaps, be described, by way of contrast, as "voluntary jurisdiction." The above description of the "compulsory" system only attempts to give a broad indication of the principle involved. In its practical application reservations are obviously necessary in regard to the character of the disputes that are agreed to be submitted to judicial settlement, as, at any rate in the present stage of international development, it has never been suggested that all disputes of whatsoever nature were capable of being included in a general agreement of the kind in question. The adherents of the "compulsory" principle are, therefore, faced with the necessity of defining the disputes suitable for inclusion in the system. As has been seen in Chapter I,[1] the Committee of Jurists, after careful consideration and discussion, decided in favour of compulsory jurisdiction in all cases of a "legal nature," this limitation being crystallized in a definition of that expression. The conclusions of the Committee are embodied in Articles 33 and 34 of their Draft Scheme.[2] In substance the proposed system provided that any dispute, no matter

[1] See pp. 6-7 *supra*.

[2] See p. 295 *infra*.

what its character might be, which it had been found impossible to settle by diplomatic means and which it had not been agreed to submit to another tribunal, could be brought before the Court by either party. It then became the duty of the Court to consider whether or not it possessed jurisdiction. The first condition as to which the Court must satisfy itself was that diplomatic means had really been tried and had failed, and also that no agreement to submit to another jurisdiction existed. If these preliminary matters were in order, it then became incumbent upon the Court to consider and decide whether the dispute was one of the "legal nature" which alone brought it within its general jurisdiction, *i.e.* whether it was a case concerning,

(*a*) the interpretation of a treaty ;
(*b*) any question of international law ;
(*c*) the existence of any fact which if established would constitute a breach of an international obligation ;
(*d*) the nature or extent of reparation to be made for the breach of an international obligation ;
(*e*) the interpretation of a sentence of the Court.[1]

If the case did not in the opinion of the Court fall under one of these heads it must decline to entertain it, unless indeed it was a dispute submitted to the Court under a special convention between the parties; here again any doubt being decided by the Court itself.

Such was the complete and carefully elaborated system of the Jurists' Committee.

As already explained,[2] this proposal of the Jurists' Committee was rejected by the Council of the League, and although compulsory jurisdiction as therein defined was universally approved in principle, the Assembly reluctantly assented to its omission as an integral part of the Court's constitution, because it was recognized that this was the only way in which unanimity could, in the existing state of international affairs, be achieved.[3] But the Assembly

[1] See p. 295 *infra*.

[2] See pp. 8-9 *supra*.

[3] See the debate in the Assembly, reported in *Records of the First Assembly, Plenary Meetings*, pp. 436-501.

was not content with a merely negative attitude, and grafted upon the provisions defining the Court's jurisdiction a clause substantially representing the Jurists' system of compulsory jurisdiction, to be brought into operation, however, only by optional acceptance of the States adhering to the Statute.[1] The vital question of jurisdiction, therefore, was settled by a compromise, which is embodied in Articles 36 and 37 of the Statute.[2]

We now proceed to examine these Articles themselves. Article 36[3] falls into two parts: the first paragraph defines the ordinary jurisdiction necessarily accepted by virtue of adherence to the Statute, and the remaining provisions offer an option to the contracting States of accepting special "compulsory" jurisdiction. The first paragraph provides as follows:—"The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." This provision, which has a wide bearing, and incorporates several diverse branches of jurisdiction, requires somewhat careful and detailed examination.

The Court is, first of all, given jurisdiction to entertain any dispute or case which the parties agree *ad hoc* to refer to it. The nature of the dispute or case is immaterial; it may be legal, political, or economic, provided only that the States concerned have agreed to submit it to the Court for decision. This is the old-established principle of voluntary arbitration, set in motion by a special submission or *compromis*, but it will be seen when we come to comment upon Article 38[4] that a new element is brought in as regards the basis upon which the Court acts: although the initial reference is identical with the old submission to arbitration, the mode of adjudication is generally assimilated to that of a court of law.[5]

It must also be noticed that the parties to the dispute and submission need not be Members of the League. Two

[1] See *Records of First Assembly, Proceedings of Committees*, pp. 312-313; Annex 14, p. 566. See also pp. 86-90 *infra*.

[2] Set out at p. 249 *infra*.

[3] Set out at p. 249 *infra*.

[4] See pp. 90-93 *infra*.

[5] See pp. 90-93 *infra*.

Member States may agree to refer a dispute, but equally so may two non-members, or one Member and one non-member.

It may not be out of place here to refer to Article 13 of the Covenant of the League,[1] although it will come up for consideration again in another connection.[2] That Article imposes upon the Members of the League an obligation to submit to arbitration or judicial settlement any dispute that may arise between them *which they recognize* to be suitable for such submission and which cannot be satisfactorily settled by diplomacy, and certain kinds of disputes, which may be broadly described as of a legal nature, are declared to be *generally* suitable for submission to arbitration or judicial settlement. The Article then proceeds to say that for the consideration of any such dispute the court to which the case is referred shall be the Permanent Court of International Justice *or any tribunal* agreed on by the parties.

It is clear that the reservations contained in this Article prevent its being construed as conferring a compulsory jurisdiction upon the Court. One State, being involved in any dispute with another, could not by virtue of this provision claim the right to refer the case, nor would the Court entertain it, in the absence of a special agreement or *compromis*.[3]

But nevertheless Article 13 of the Covenant has a bearing upon the jurisdiction of the Court to entertain "all cases which the parties refer to it,"[4] as within the limits laid down it binds the Members of the League to have recourse to a procedure of settlement which in the ordinary course of things will generally bring them before the Court.

The jurisdiction conferred by the words "all matters specially provided for in treaties and conventions in force"[5] falls under two heads: Future Treaties and Existing Treaties.

[1] Set out at p. 232 *infra*. [2] See pp. 64-67 *infra*.

[3] See Assembly Sub-Committee's Report, Art. 36 and 37, pp. 319-320 *infra*.

[4] See Statute, Art. 36, first para., p. 249 *infra*. [5] *Ibid*.

Treaties or conventions referring disputes to the Court can be made at any time, for it is clear that the words just cited include future treaties and conventions as well as those in force when the Statute was adopted.[1] The treaty can be between two States only, or it may be general, between several States. The scope of such instruments can vary widely; they may provide for reference of all disputes without exception, or of legal disputes only; they may or may not contain reservations in regard, for instance, to "honour" or "vital interests." As confidence in the Court grows such treaties will no doubt become increasingly common.

Turning to the position under existing treaties, it may be well to point out at the outset, in order to avoid the possibility of misunderstanding, that the Court derives no jurisdiction from arbitration conventions, whether general or particular, made before its institution. The reference in such conventions is to another tribunal, either designated in advance or to be set up *ad hoc;* the new Court cannot be substituted except by further agreements between the interested parties.[2] But there are a number of existing treaties and other international agreements made in connection with or soon after the peace settlement that contain special provisions affecting the Court's jurisdiction. These provisions may be classified according as they are contained in (1) the Covenant itself; (2) the Peace Treaties (apart from the Covenant) and Minorities Treaties; (3) Miscellaneous treaties and conventions; (4) Mandates. Before, however, embarking upon the consideration of these provisions, reference must be made to Article 37 of the Statute, which is ancillary to and must be read with the words "all matters specially provided for in treaties and conventions in force" in Article 36. Article 37 states that "when a treaty or convention in force provides for the reference of any matter to a tribunal to be instituted

[1] See Assembly Sub-Committee's Report, Art. 36 and 37, pp. 319-320 *infra.*

[2] *Ibid.*

by the League of Nations the Court will be such tribunal." Of the provisions contained in the treaties and other instruments classified under the four heads alluded to above, some do not refer to the Court by name, and in such cases it is the extended application given to the words "all matters specially provided for by treaties and conventions in force" by Article 37 that makes these provisions referable to the Statute and thereby operative as a source of jurisdiction. It seems clear that whilst, as was pointed out above, it would not have been competent for the Statute to give jurisdiction to the Court under pre-existing arbitration treaties that did not contemplate its institution, different considerations apply in the case of treaties such as those now in question which provide for reference to a tribunal contemplated and intended by the parties concerned to be set up.

(1) *The Covenant.*—The first matter to be noticed under this head is Article 13 of the Covenant, which, as has been pointed out,[1] contains an express reference to the Court. As already indicated,[2] the jurisdiction here given is "voluntary" and requires a special agreement in order to give the Court seisin of a dispute, but it is likely to prove an important source of litigation by reason of the scheme and structure of the group of Articles in the Covenant of which Article 13 is one. Article 12 creates an obligation binding upon the Members of the League to submit any dispute between them likely to lead to a rupture to one of three methods of settlement: arbitration, judicial settlement, or enquiry by the Council. This obligation extends to every species of dispute whatsoever without exception, reservation, or qualification, save this: that the dispute must be sufficiently serious to be likely to lead to a rupture. But it should be observed that as the occurrence of a rupture is a matter dependent upon the act of one of the parties the likelihood of its occurring is necessarily dependent upon one party's opinion. It follows that every dispute can be brought within Article 12 if either party

[1] See p. 62 *supra.* [2] *Ibid.*

so desires.[1] A Member of the League involved in any dispute with another Member can rely upon its provisions and propose one of the three alternative methods of settlement. Article 13, as has already been seen,[2] involves a conditional obligation to resort to arbitration or judicial settlement, the condition being that the parties should *recognize* that the matter is suitable for submission to one or other of these procedures. If the condition is satisfied, the Court is under Article 13 *prima facie* the proper tribunal. It may be objected that the other party can defeat the jurisdiction by refusing to recognize the suitability of the dispute for such procedure. This is undoubtedly true, but the only alternative left to the party that raises such an objection is resort to the Council under Article 15 of the Covenant. This last alternative cannot be avoided on any ground, for by the terms of the Article, "if there should arise between Members of the League any dispute likely to lead to a rupture, *which is not submitted to arbitration or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. *Any party* to the dispute may effect such submission by giving notice," etc.[3]

Faced with this alternative, it appears unlikely that a State would, except in very special circumstances, prefer to force resort to the Council in the case of a dispute really legal in character. In other words, where the dispute is of the kind properly within the Court's domain as a judicial tribunal, it will in the ordinary course of things be brought before it under Article 13, notwithstanding the "voluntary" nature of the jurisdiction created thereby, and this

[1] For an authoritative interpretation of the effect of the words: "likely to lead to a rupture" in Article 15 of the Covenant, see Report of Commission of Jurists, appointed by the League in connection with the Corfu incident of 1923: *League of Nations Official Journal*, 5th year, No. 4, pp. 523-524. This interpretation coincides with that given in the text.

[2] See p. 62 *supra*.

[3] See pp. 232-233 *infra*, and the authoritative interpretation of this Article referred to in footnote 1 above.

if only because of the existence in the background of the "compulsory" jurisdiction possessed by the Council under Article 15. Moreover, as will be shown below, the power given to the Council by Article 14 to refer matters to the Court for advisory opinion has a material bearing upon the system laid down in the Covenant, as it enables legal questions to be remitted to the Court even where the dispute has been brought before the Council.[1] One more point should be noticed in connection with this system, and that is the special stipulations contained in the eighth paragraph of Article 15: "If the dispute between the parties is claimed by one of them and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report and shall make no recommendation as to its settlement." This provision may seem to offer a loophole to a State desirous of avoiding a settlement by outside authority and to tempt such a State to reject arbitration and judicial settlement and prefer recourse to the Council in the hope of establishing a right to claim the benefit of this exception. But in order to succeed in this course the matter must be shown to be within the State's domestic jurisdiction *by international law*, and this being essentially a legal question falls naturally within the province of the Court to determine. As will be seen below, the procedure to be followed when this clause is relied upon has actually arisen in a dispute between France and Great Britain, and the course adopted in that instance may be expected to form a precedent in future.[2]

So far, we have been considering the code laid down by the Covenant for the settlement of disputes between Members of the League. It should, however, be remembered that by Article 17 of the Covenant provision is made in contemplation of disputes between a Member and a non-member and also between two non-members. In these cases the Council is charged with the duty of inviting

[1] See pp. 67-68 *infra*.

[2] See the case of the *Tunis and Morocco Nationality Decrees*, pp. 144-156 *infra*.

the non-member State or States to accept the obligations of membership for the purposes of the dispute. If the invitation is accepted the code described above applies; and it has already been seen that non-member States have access to the Court on a footing of perfect equality with Members of the League, and enjoy identical rights before it.[1]

The next point to be considered in connection with the jurisdiction arising under the Covenant is the power of the Court to give advisory opinions. Article 14 of the Covenant, after making provision for the establishment of the Court and defining its general sphere of action, proceeds as follows: "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." The Statute of the Court as finally adopted contains no express reference to advisory opinions. A special Article dealing with the matter was contained in the Jurists' Draft Scheme,[2] but the Assembly Sub-Committee suppressed it.[3] In so doing it would appear that the logical course was taken, having regard to the provisions of Article 36 of the Statute, for when this Article states that "the jurisdiction of the Court comprises . . . all matters specially provided for in treaties and conventions in force" it must include the giving of advisory opinions expressly stipulated by Article 14 of the Covenant.[4] This conclusion is confirmed by the distinction made in Article 36 of the Statute between "cases" referred by the "parties," *i.e.* litigation, and "matters," a term wide enough to embrace advisory procedure.[5]

In point of fact, the Court's advisory function has proved very important, its exercise having been responsible for the major portion of its work up to the present

[1] See pp. 56-58 *supra*.

[2] See Art. 36, pp. 295-296 *infra*.

[3] See Report "(Brussels, Art. 36)" p. 321 *infra*.

[4] This matter is discussed in two memoranda by Mr. Moore, printed in Series D, No. 2, of the Court's publications, at pp. 383-398 and 512-513.

[5] "Affaires" and "cas" are the corresponding words in the French text.

time. It will be observed that there are two bodies, and two only, competent under Article 14 of the Covenant to apply to the Court for an advisory opinion, namely, the Council and the Assembly of the League. So far, the Council alone has availed itself of this right.

The advice can be sought either upon a "dispute" or a "question." The Committee of Jurists, acute to appreciate this distinction, had proposed separate procedures varying according to whether the matter referred to the Court for opinion was an abstract question or an actual dispute.[1] This proposal has not been embodied in the Statute, and the Court in dealing with all advisory matters sits *in pleno* as in contentious cases.[2] But the distinction alluded to offers the key to the importance of the advisory jurisdiction. It may happen, as has in fact already been the case, that disputes arise between Members of the League which under the code contained in Articles 12, 13, and 15 of the Covenant are brought before the Council rather than submitted to arbitration or judicial settlement, notwithstanding the fact that they involve legal questions. Or, again, differences may arise either between Members of the League or between a Member and a non-member which come within the sphere of action of the Council, although not directly submitted to it under those Articles or Article 17.[3] In such cases the Council can refer either the whole dispute or difference, or some one or more issues arising in it, to the Court for advisory opinion, and thereby obtain what is in substance, if not in form, a judicial decision upon the matter, the authority of which is supported by the whole weight of the Court's independent position. This branch of jurisdiction has proved in the past, and is likely to prove in the future, one of the most fertile opportunities for extending the Court's field of activity and usefulness.

In regard to "questions" as contrasted with "dis-

[1] See Draft Scheme, Art. 36, pp. 295-296 *infra*, and Report, *Procès Verbaux of the Proceedings of the Jurists' Committee*, pp. 730-731.

[2] See Rules of Court, Art. 71, p. 279 *infra*.

[3] *e.g.* in regard to the protection of Minorities, see pp. 72-74, 175-198 *infra*.

putes," the Council or the Assembly can request the Court to give an advisory opinion on a point of interpretation, international law, or other matters, not necessarily arising out of a pending dispute, but, for example, after a dispute has been settled as a guide for the future.

The powers of the Court in regard to entertaining matters submitted to it for advisory opinion differ from its position in respect of litigation referred by parties. In the latter instance the Court cannot refuse to entertain and decide the case provided it has jurisdiction. But upon a matter referred by the Council or Assembly for advisory opinion the Court is free to decline to give an opinion. This follows, it is submitted, from the provisions of Article 14 of the Covenant. The English text is plain: "The Court *may* also give an advisory opinion." The French text contains the word "donnera" to correspond with "may give." Both texts are equally authentic.[1] Although the French text, if it stood alone, would undoubtedly be open to an imperative construction, it appears that, having regard to the unequivocal meaning of the English text, the advisory jurisdiction of the Court must be considered as permissive only; a power or capacity to give advisory opinions is conferred upon it, but there is no absolute obligation to do so in every instance.[2] The Court itself has acted upon this view, in the question concerning the *Status of Eastern Carelia* which it declined to answer.[3]

Misgivings may be entertained as to the effect of the advisory jurisdiction upon the status of the Court. The question arises as to the force of the opinion. Is it binding upon the Council or Assembly and are the States to which it may refer under an obligation to follow it? The answer to these questions is negative as to form, and affirmative as to substance. It is true that the consulting body is under no legal obligation to give effect to the Court's

[1] See Treaty of Versailles, Art. 440.

[2] See Mr. Moore's Memorandum in *Publications of the Court*, Series D, No. 2, pp. 384-385.

[3] See pp. 156-164 *infra*.

opinion, and still less are the States concerned, which are not technically "parties" before the Court, bound thereby. But in fact it would be impossible for the Council or Assembly, having referred a matter to the Court for its opinion, to disregard its conclusions. The whole purpose of the reference being to obtain an impartial and authoritative opinion, the moral responsibility and public disapproval incurred by ignoring it or failing to carry it substantially into operation would be too strong to make such a course practicable. Similarly, as to the States concerned, the decision to refer a matter to the Court for advisory opinion is frequently taken at their instance, when they can scarcely decline to be bound by the result. But even where this is not the case,[1] the moral effect of the decision tends to make it respected in itself, although it must be remembered that the duty of enforcement rests upon the consulting body, generally the Council.

The advisory power may also be criticized on the ground that it does not accord with the judicial character of the Court. It may be said that the true function of a Court is to decide disputes by means of a judgment directly binding upon the parties and not to issue opinions possessing merely advisory force. In the above remarks it has been endeavoured to show that beneath the advisory form there is an element of obligatory operation. It may not be irrelevant to recall that the decisions of our own Privy Council when exercising its functions as a Court of Appeal through the Judicial Committee are both in form and legal theory advisory, and, further, that by Act of Parliament[2] a special power is conferred upon the Judicial Committee of giving advisory opinions upon any matter referred to it by the Crown. Moreover, it must be remembered that the International Court when exercising its advisory jurisdiction acts as a judicial body applying legal principles,[3] and the object of the reference for opinion is

[1] It is to be observed that, in practice, disputes between Members of the League can only be referred to the Court for opinion *with the consent* of the States concerned. See pp. 163-164 *infra*.

[2] 3 and 4, Will. 4, c. 41, s. 4.

[3] See pp. 90-93 *infra*.

to obtain a settlement of the matter in controversy on the basis of law and justice, as contra-distinguished from political expediency.

Doubt may also be felt as to the bearing of the advisory function of the Court upon the development of international jurisprudence. One of the Court's most important tasks will be to contribute to the building up of an international Common Law based on an ever-expanding series of decisions,[1] and the question arises whether the advisory opinions will have the force of precedents or be mere *dicta* without binding authority even upon the Court itself. It is submitted that the principles laid down and points decided in advisory opinions have the same effect by way of precedent as the judgments of the Court, and will contribute to an equal degree in the development of international law. The Court being bound, in formulating opinions, to apply legal rules and principles,[2] is, by the nature of things, constrained to follow in subsequent cases the decisions come to in earlier ones. Further, these opinions, in so far as they relate to questions of international law, will necessarily tend to become recognized as authoritative statements of the law by the community of nations. It may be observed in this connection that notification of the questions referred to the Court is given to all Members of the League, and sometimes also to non-member States, so that they are afforded an opportunity of presenting their point of view if they so desire.[3] The Court itself has shown its appreciation of the importance of its advisory opinions by framing them with elaboration and including a full statement of the reasons upon which the conclusions arrived at are based.

(2) *The Peace Treaties (apart from the Covenant) and the Minorities Treaties.*—This is the second branch of special provisions under which jurisdiction arises in accordance with Article 36 of the Statute,[4] as supplemented by Article 37.[5] The jurisdiction under the Treaties of Peace,

[1] See p. 92 and Chapter V. *infra.*
[2] See p. 93 *infra.*
[3] See pp. 123-124 *infra.*
[4] Set out at p. 249 *infra.*
[5] Set out at p. 249 *infra*; and see pp. 63-64 *supra.*

leaving aside for the moment provisions for the protection of minorities, falls into two divisions: (*a*) Transit and communications, and (*b*) Labour.

The relevant provisions under (*a*) are the following:

Treaty of Versailles, Articles 336, 337, 353, 386.[1]
Treaty of St. Germain, Articles 297, 298, 308, 327 (7).
Treaty of Neuilly, Articles 225, 226.
Treaty of Trianon, Articles 281, 282.[2]

Those under (*b*) are the following:

Treaty of Versailles, Articles 415 to 418, 423.
Treaty of St. Germain, Articles 360 to 363, 368.
Treaty of Neuilly, Articles 267 to 270, 285.
Treaty of Trianon, Articles 343 to 346, 351.[3]

Under both groups of Articles jurisdiction is conferred upon the Court at the instance of either party to a dispute or difference, *i.e.* the jurisdiction is "compulsory." As has been seen above,[4] the Statute contemplates the setting up of special chambers of the Court to deal with these matters.

Turning to the provisions relating to the protection of minorities, these are contained partly in the Peace Treaties

[1] Article 386 has led to the submission of a case to the Court. See the s.s. *Wimbledon*, pp. 164-175 *infra*.

[2] See also Treaty between the Principal Allied and Associated Powers and Roumania, signed at Paris on Dec. 9, 1919, Art. 16; Agreement between the "Succession States" of the Austro-Hungarian Monarchy signed at Portorosa on Nov. 23, 1921, Art. 13.

[3] It should perhaps be pointed out that there are other Articles in the Peace Treaties providing that differences shall be settled by the League of Nations, by an arbitrator appointed by the League, etc. These Articles are the following: Treaty of Versailles, Art. 289, 376; Treaty of St. Germain, Art. 241, 324, 327 (5), 328; Treaty of Neuilly, Art. 168, 245; Treaty of Trianon, Art. 224, 292, 293, 307, 311. It is submitted, however, that these provisions do not confer jurisdiction upon the Court under the terms of Article 37 of the Statute, although it would be open to the League to refer the matters in question to the Court. Paragraph 22 of the Annex to Part III. Section IV., and Article 65 of the Treaty of Versailles may also be mentioned, although here again it would not appear that the references to Part XII. of the Treaty have the effect of incorporating the Articles giving jurisdiction.

[4] See pp. 43-46 *supra*.

themselves, and partly in separate instruments made in connection with the peace settlement.

The following is a list of the relevant Articles:

Treaty of St. Germain, Article 69;
Treaty of Neuilly, Article 57;
Treaty of Trianon, Article 60;
Treaty of Lausanne, Article 44;
Treaty dated June 28, 1919, between the Principal Allied and Associated Powers and Poland, Article 12;
Treaty dated September 10, 1919, between the Principal Allied and Associated Powers and Czecho-Slovakia, Article 14;
Treaty dated September 10, 1919, between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State, Article 11;
Treaty dated December 9, 1919, between the Principal Allied and Associated Powers and Roumania, Article 12;
Treaty dated August 10, 1920, between the Principal Allied and Associated Powers and Greece, Article 16;
Treaty dated August 10, 1920, between the Principal Allied and Associated Powers and Armenia, Article 8;
Declaration made by Albania on October 2, 1921, before the Council of the League of Nations at Geneva, Article 7;
Declaration made by Lithuania on May 12, 1922, before the Council at Geneva, Article 9;
Convention dated November 9, 1920, between Poland and the Free City of Danzig, Article 33;
German-Polish Accord relative to Upper Silesia, dated May 15, 1922, Article 72.[1]

[1] See also Agreement between Finland and Sweden in regard to the Aaland Islands annexed to the Resolution of the Council of the League, dated June 24, 1921, and Resolution of the Council, dated Sept. 17, 1923, relating to the protection of minorities in Esthonia, accepted by that country. These instruments provide for the submission of questions to the Court for advisory opinion.

These Articles, which are all in similar terms, form part, in each case, of a code for the protection of racial, religious, and linguistic minorities in the respective countries concerned. Broadly stated, the scheme is to create an obligation upon the State not to discriminate in law or fact between those of its nationals who belong to the majority and those who belong to a minority, whether of race, religion, or language, and also to afford the latter equal facilities for education and worship. Then follows an Article designed to secure that the obligation shall be duly carried out. This is the provision that directly concerns us. In view of its importance, it may be convenient to set out its terms as contained in Article 12 of the Polish Treaty of June 28, 1919, which is the model followed in all the Articles referred to in the above list:—

"Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

"Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

"Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

It will be noticed that here again the jurisdiction is "compulsory," *i.e.* the treaty confers upon any one of the Principal Allied and Associated Powers or any other Power for the time being a Member of the Council the right to refer a dispute unilaterally to the Court.[1]

(3) *Miscellaneous Treaties and Conventions.*—A number of international agreements, in addition to those mentioned above, have been made providing for the reference of disputes to the Court. Some of these date from before its establishment, whilst others were made subsequently. The following is a table of the relevant provisions in so far as it has been possible to ascertain them up to the present[2]:—

Convention for the regulation of Aerial Navigation, signed at Paris on October 13, 1919.

Article 37:

"In the case of a disagreement between two or more States relating to the interpretation of the present convention the question in dispute shall be determined by the Permanent Court of International Justice to be established by the League of Nations and until its establishment by arbitration.

"If the parties do not agree on the choice of the arbitrators they shall proceed as follows:

. . . . . .

"Disagreement relating to the technical regulations annexed to the present convention shall be settled by the decision of the International Commission for Air Navigation by a majority of votes.

"In case the difference involves the question whether the interpretation of the Convention or that of a regulation is concerned, final decision shall be made by arbitration as provided in the first paragraph of this Article."[3]

Convention and Statute on Freedom of Transit, concluded at Barcelona on April 20, 1921.

[1] This treaty has formed the subject of cases before the Court. See pp. 175-198 *infra*.

[2] For information as to the States which have signed and ratified the agreements mentioned in the text, see *Publications of the Permanent Court of International Justice*, Series D, No. 4, pp. 45-196.

[3] It is submitted that the arbitration referred to is clearly that of the Court, as from the time when it has been established.

Article 13 of the Statute:

"Any dispute which may arise as to the interpretation or application of this Statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitrative provision steps are taken for the settlement of the dispute by arbitration or some other means.

"Proceedings are opened in the manner laid down in Article 40[1] of the Statute of the Permanent Court of International Justice.

"In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations, as the advisory and technical organization of the Members of the League in matters of communication and transit.[2] . . ."

Convention and Statute on the régime of Navigable Waterways of International Concern, concluded at Barcelona on April 20, 1921.

Article 22 of the Convention:

"Without prejudice to the provisions of paragraph 5 of Article 10 any dispute between States as to the interpretation or application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitrative provision, steps are taken for the settlement of the dispute by arbitration or some other means.

"Proceedings are opened in the manner laid down in Article 40[3] of the Statute of the Permanent Court of International Justice.

"In order to settle such disputes in a friendly way as far as possible the Contracting States undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organization of the Members of the League in matters of communication and transit. . . ."[4]

[1] See pp. 97-99 *infra*.

[2] The organization here referred to is not the Court. See also the Convention concerning the Transfer of the Memel Territory signed at Paris on May 8, 1924, Annex III. Art. 3, which applies Art. 13 above to Memel.

[3] See pp. 97-99 *infra*.

[4] This organization is not the Court.

Convention instituting the definitive Statute of the Danube, signed at Paris on July 23, 1921.

Article 38:

"All questions relative to the interpretation and application of the present Convention shall be submitted to the Commission.

"A State which is prepared to allege that the decision of the International Commission is *ultra vires* or violates the Convention may, within six months, submit the matter to the special jurisdiction set up for that purpose by the League of Nations.[1] A demand for a ruling under the aforesaid conditions, based on any ground, may only be preferred by the State or States territorially interested.

"When a State neglects to carry out a decision taken by the Commission in virtue of the powers which it holds from the Convention, the dispute may be submitted to the jurisdiction referred to in the preceding paragraph, in the conditions provided for in the rules of the said jurisdiction."

Convention between Denmark and Norway relating to Air Navigation, signed at Copenhagen on July 27, 1921.

Article 40:

"Disputes between the Contracting States affecting the interpretation or application of this Convention and of the Annexes thereto shall, if they cannot be settled by direct negotiations, be referred for decision to the Permanent Court of International Justice instituted by the League of Nations."

Political Agreement between Czecho-Slovakia and Austria, concluded at Prague on December 16, 1921.

Article 7:

"Should disputes arise between the two States after the conclusion of the present agreement, the two Governments undertake to endeavour to settle them by amicable arrangement; they will, if need be, submit the dispute to the Permanent Court of International Justice, or to an arbitrator or arbitrators chosen *ad hoc*."

Polish-German Accord with reference to Upper Silesia, signed at Geneva on May 18, 1922.

Article 23:

"Should differences of opinion respecting the construction and application of Articles 5 to 22, arise between the German and

[1] Although the interpretation of this sentence is not entirely free from doubt, it is submitted that the Court is the "special jurisdiction" referred to. See pp. 45-46, 63-64 *supra*.

Polish Governments, they shall be submitted to the Permanent Court of International Justice."

Treaty between Great Britain and Iraq, signed at Bagdad on October 10, 1922.

Article 17:

"Any difference that may arise between the High Contracting Parties as to the interpretation of the provisions of this Treaty, shall be referred to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations. In such case should there be any discrepancy between the English and Arabic texts of this Treaty, the English shall be taken as the authoritative version."

Commercial Convention between Switzerland and Poland, concluded at Warsaw on June 26, 1922.

Final Protocol, Para. 2:

"The Contracting Parties undertake to submit to a commission of conciliation disputes relating to the interpretation and execution of the present convention which may arise between them and cannot be settled by diplomatic means.

"Should the procedure by conciliation be unsuccessful, the dispute shall be submitted, at the request of either Party, to the Permanent Court of International Justice. . . ."

Convention between Norway and Sweden relating to Air Navigation, signed at Stockholm on May 26, 1923.

Article 40:

"Disputes between the Contracting States affecting the interpretation or application of this Convention and of the annexes thereto, shall, if they cannot be settled by direct negotiations, be referred for decision to the Permanent Court of International Justice instituted by the League of Nations."

Convention for the suppression of the circulation of and traffic in Obscene Publications, signed at Geneva on September 12, 1923.

Article 15:

"Disputes between the Parties relating to the interpretation or application of this Convention shall, if they cannot be settled by direct negotiation, be referred for decision to the Permanent Court of International Justice. In case either or both of the Parties to such a dispute should not be Parties to the protocol of

signature of the Permanent Court of International Justice, the dispute shall be referred, at the choice of the Parties, either to the Permanent Court of International Justice or to arbitration."

International Convention relating to the simplification of Customs Formalities, concluded at Geneva on November 3, 1923.

Article 22:

The third paragraph of this Article provides that if a dispute should arise between two or more Contracting States "with regard to the interpretation or application of paragraphs 2 or 3 of Article 4, or Article 7,[1] of the present Convention, the parties shall, at the request of any of them, refer the matter to the decision of the Permanent Court of International Justice, whether or not there has previously been recourse to the procedure prescribed in the first paragraph of this article. . . ." [2]

Convention and Statute on the International Régime of Railways, concluded at Geneva on December 9, 1923.

Article 36 of the Statute:

The earlier paragraphs of this Article make provision in regard to arbitration of disputes as to the interpretation or application of the Statute. The fourth paragraph then proceeds: "During the course of the arbitration the Parties in the absence of any contrary provision in the terms of reference, are bound to submit to the Permanent Court of International Justice any question of international law or question as to the legal meaning of this Statute the solution of which the arbitral tribunal, at the request of one of the Parties, pronounces to be a necessary preliminary to the settlement of the dispute."

[1] These Articles provide as follows:

Article 4: The Contracting States agree that no Customs regulations shall be enforced before such regulations have been published, either in the Official Journal of the country concerned or through some other suitable official or private channel of publicity. This obligation to publish in advance extends to all matters affecting tariffs and import and export prohibitions or restrictions.

Article 7: The Contracting States undertake to take the most appropriate measures by their national legislation and administration both to prevent the arbitrary or unjust application of their laws and regulations with regard to Customs and other similar matters, and to ensure redress by administrative, judicial or arbitral procedure for those who may have been prejudiced by such abuses.

All such measures which are at present in force or which may be taken hereafter shall be published in the manner provided by Articles 4 and 5.

[2] The procedure referred to is reference to a technical body appointed by the Council of the League of Nations.

Convention and Statute on the International Régime of Maritime Ports, concluded at Geneva on December 9, 1923.

Article 8 of the Statute:

"Each of the Contracting States reserves the power, after giving notice through diplomatic channels, of suspending the benefit of equality of treatment from any vessel of a State which does not effectively apply, in any maritime port situated under its sovereignty or authority, the provisions of this Statute to the vessels of the said Contracting State, their cargoes and passengers.

"In the event of action being taken as provided in the preceding paragraph, the State which has taken action and the State against which action is taken, shall both alike have the right of applying to the Permanent Court of International Justice by an application addressed to the Registrar; and the Court shall settle the matter in accordance with the rules for summary procedure.

"Every Contracting State shall, however, have the right, at the time of signing or ratifying this Convention, of declaring that it renounces the right of taking action as provided in the first paragraph of this article against any other State which may make a similar declaration."

Article 22 of the Statute:

After providing, in its earlier paragraphs, for arbitration in regard to disputes as to the interpretation and application of the Statute, the fourth paragraph of Article 22 proceeds as follows: "During the course of the arbitration the Parties, in the absence of any contrary stipulation in the terms of reference, are bound to submit to the Permanent Court of International Justice any question of international law or question as to the legal meaning of this Statute the solution of which the arbitral tribunal, at the request of one of the Parties, pronounces to be a necessary preliminary to the settlement of the dispute."

Treaty of Alliance and Friendship between France and Czecho-Slovakia, signed at Paris on January 25, 1924.

Article 6:

"In accordance with the principles laid down by the League of Nations, the High Contracting Parties agree that should disputes arise between them in the future which cannot be settled by friendly agreement or through diplomatic channels, they will submit such disputes either to the Permanent Court of International Justice or to one or more arbitrators chosen by the Court."

Convention concerning the transfer of the Memel Territory, signed at Paris on May 8, 1924.

Article 17:

"The High Contracting Parties declare that any Member of the Council of the League of Nations shall be entitled to draw the attention of the Council to any infraction of the provisions of the present Convention.

"In the event of any difference of opinion in regard to questions of law or of fact concerning these provisions between the Lithuanian Government and any of the Principal Allied Powers, Members of the Council of the League of Nations, such difference shall be regarded as a dispute of an international character under the terms of Article 14 of the Covenant of the League of Nations. The Lithuanian Government agrees that all disputes of this kind shall, if the other party so requests, be referred to the Permanent Court of International Justice. There shall be no appeal from the Permanent Court's decision, which shall have the force and value of a decision rendered in virtue of Article 13 of the Covenant."

The London Agreements as to Reparations of August 30, 1924.[1]

(*a*) Agreement between the Allied Governments and Germany to carry out the Experts' Plan of April 9, 1924 (the "Dawes" Plan).

Article 10:

"All disputes which may arise between the Allied Governments or one of them on the one side and Germany on the other side with regard to the present agreement shall, if they cannot be settled by negotiation, be submitted to the Permanent Court of International Justice."

(*b*) Inter-Allied Agreement to carry out the Experts' Plan of April 9, 1924 (the "Dawes" Plan).

Article 4:

"Any dispute between the Signatory Governments arising out of Articles 2 or 3 of the present agreement[2] shall, if it cannot be settled by negotiation, be submitted to the Permanent Court of International Justice."

In addition to these treaties and conventions there are

[1] These agreements are printed as a White Paper, Cmd. 2259 (Treaty Series, No. 36 (1924)).

[2] These Articles relate to sanctions.

a number of further agreements providing for the submission or reference of disputes to "an arbitral tribunal in conformity with the provisions of the Covenant of the League of Nations"[1] or "to the League of Nations, according to the procedure laid down for the regulations of disputes"[2] or "by agreement between the States concerned to arbitration either by arbitrators chosen *ad hoc* or by the Permanent Court of International Justice,"[3] etc., but although such provisions no doubt open the way to the Court and may be expected to lead to recourse being had to it, they do not confer direct jurisdiction upon it.

It will be noticed that under most of the Articles set out above it is open to a single party to refer the case to the Court. This is so, in particular, whenever the Convention states that the dispute, question, or difference *shall* be determined by or submitted to the Court.

(4) *Mandates*.—Each of the Mandates granted by the League of Nations under Article 22 of the Covenant[4] contains a provision referring disputes arising under the Mandate to the Court. This jurisdiction, it is submitted, is covered by the words "all matters specially provided for in treaties and conventions in force" in Article 36 of the Statute. It might be suggested that a Mandate is not technically a "treaty" or "convention," but it is to be observed (*a*) that the consent of the Mandatory is required, under Article 22 of the Covenant, to the acceptance of the Mandate itself, and (*b*) that the provision relating to the Court's jurisdiction is in the form of an agreement. It is, therefore, submitted that although a Mandate is a novel form of international instrument it must be regarded as a "treaty" or "convention" within the meaning of Article 36 of the Statute in so far as the provision relating

[1] Convention for control of trade in arms and ammunition signed at Paris on Sept. 10, 1919, Art. 24; Convention relating to the liquor traffic in Africa signed at St. Germain on Sept. 10, 1919, Art. 8.

[2] Convention instituting the Statute of Navigation of the Elbe, signed at Dresden on Feb. 23, 1922, Art. 52.

[3] Convention between Poland and the Baltic States signed at Warsaw on March 17, 1922, Art. 6.

[4] See pp. 236-238 *infra*.

to the Court is concerned. This view has been accepted in a recent case before the Court.[1]

The provision in question, as it appears in the Mandate for Nauru entrusted to His Britannic Majesty, dated Geneva, December 17, 1920, is as follows:—

Article 7, para. 2:

"The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice, provided for by Article 14 of the Covenant of the League of Nations."

The same provision forms part of the following Mandates:—

Mandate for German Samoa entrusted to His Britannic Majesty, to be exercised in his name by the Government of the Dominion of New Zealand (Geneva, December 17, 1922), Art. 7, para. 2.

Mandate for the German Possessions in the Pacific Ocean, south of the Equator, other than German Samoa and Nauru, entrusted to His Britannic Majesty, to be exercised in his name by the Government of the Commonwealth of Australia (Geneva, December 17, 1922), Art. 7, para. 2.

Mandate for German South-West Africa entrusted to His Britannic Majesty, to be exercised in his name by the Government of the Union of South Africa (Geneva, December 17, 1920), Art. 7, para. 2.

Mandate for the former German Colonies in the Pacific Ocean, north of the Equator, entrusted to H.M. the Emperor of Japan (Geneva, December 17, 1920), Art. 7, para. 2.

Mandate for East Africa, entrusted to H.M. the King of the Belgians (London, July 20, 1922), Art. 13.

Mandate for the Cameroons, entrusted to the French Republic (London, July 20, 1922), Art. 12.

[1] See *The Mavrommatis Palestine Concessions*, pp. 203-213 *infra*.

Mandate for Togoland, entrusted to the French Republic (London, July 20, 1922), Art. 12.

Mandate for the Cameroons, entrusted to His Britannic Majesty (London, July 20, 1922), Art. 12.

Mandate for Togoland, entrusted to His Britannic Majesty (London, July 20, 1922), Art. 12.

Mandate for Palestine, entrusted to His Britannic Majesty (London, July 24, 1922), Art. 26.

Mandate for Syria and Lebanon, entrusted to the French Republic (London, July 24, 1922), Art. 20.

In the Mandate for East Africa entrusted to His Britannic Majesty (London, July 20, 1922), the material provision is in the following form:—

Article 13:

"The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

"States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this Mandate before the said Court for decision."

The second paragraph of this provision appears merely to formulate in express terms what is implicit in the form common to the other Mandates, inasmuch as under a "dispute relating to the interpretation and application of the provisions of the Mandate" it would be open to a State to raise claims on behalf of its nationals for infractions of their rights thereunder.[1]

Before leaving the subject of what was described above[2] as the ordinary jurisdiction of the Court, *i.e.* the jurisdiction arising under the first paragraph of Article 36 of the Statute coupled with Article 37, it is necessary to

[1] See *The Mavrommatis Palestine Concessions*, pp. 203-213 *infra*. It is to be observed that two of the dissenting judges in that case regarded the paragraph in question as conferring exceptional rights absent under the other Mandates: see *Publications of the Court*, Series A, No. 2, pp. 82-83, 86-87.

[2] See p. 61 *supra*.

consider the last paragraph of Article 36, which provides that "in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."[1] Does this provision apply to the whole of Article 36 or only to the second and subsequent paragraphs? If the actual terms of the Article itself are alone considered it seems plain that the last paragraph must be construed as relating to a dispute in regard to the jurisdiction defined by the first paragraph as well as to disputes in regard to the special compulsory jurisdiction. But if, in order to interpret the Article, regard is had to the proceedings of the drafting committees and the amendments and additions introduced by them as throwing light upon the meaning of the final terms as adopted in the Statute, the opposite conclusion seems inevitable.

Article 36 was introduced by the Assembly Sub-Committee in substitution for Articles 33 and 34 of the text adopted by the Council at Brussels,[2] and consisted only of the first paragraph as it stands in the Statute. It was when this draft came before the Third Committee of the Assembly that the subsequent provisions relating to the optional acceptance of compulsory jurisdiction were introduced into Article 36, inclusive of the last paragraph providing for the settlement of disputes as to jurisdiction by the Court itself.[3] There is nothing in the terms of the Committee's Report[3] to suggest that they intended or contemplated that this provision should be applicable to the jurisdiction defined by the first paragraph. According to the principles of construction prevailing upon the Continent, it would be permissible and even necessary to look at the history of the Article for the purpose of ascertaining its meaning, whereas under our own system of interpretation the final text should be construed as it stands and the intention of the parties gathered only from the actual language used. It would thus appear that the question

[1] See p. 249 *infra*.

[2] Arts. 33 and 34 are set out at p. 310 *infra*.

[3] See Report of Third Committee, Art. 36, p. 325 *infra*.

whether or not the last paragraph applies to the first paragraph depends upon which system of construction is adopted. In support of the English system it is material to remember that the Statute is an international instrument dependent for its force and effect upon the consent of the States which are parties to it, and that in adhering to it they must be taken to have accepted and ratified the actual terms contained in the Statute itself, and cannot be bound by, or conversely claim as against another party to rely upon, the multifarious implications which may arise from a consideration of the proceedings (to which they may have been strangers) preparatory to the drafting of these terms.

It should be observed that in a dispute submitted to the Court by the Greek Government under Article 26 of the Mandate for Palestine,[1] where the British Government appeared and put in a preliminary objection to the jurisdiction, the Court treated the paragraph under discussion as applicable and proceeded to decide the preliminary question.[2] Indeed, it seems fairly clear that it will always be possible for a single party to bring the question of jurisdiction before the Court without special agreement in any doubtful case arising under the various heads referred to above.[3]

We now turn to the second and third paragraphs of Article 36, which provide for a special compulsory jurisdiction dependent for its operation upon the optional acceptance of the Contracting States. These paragraphs are in the following terms:—

"The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a Treaty;

(*b*) Any question of International Law;

[1] See pp. 83-84 *supra*.

[2] See *The Mavrommatis Palestine Concessions*, pp. 203-213 *infra*.

[3] See pp. 71-84 *supra*

(*c*) The existence of any fact which, if established, would constitute the breach of an international obligation ;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

"The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time."

These provisions embody the compromise, already referred to,[1] between the conflicting views of the advocates of "compulsory" and "voluntary" jurisdiction. When it was found that the full compulsory system as proposed by the Committee of Jurists was incapable of obtaining unanimous acceptance the Brazilian delegate (M. Fernandes) at the First Assembly of the League suggested[2] this middle course whereby any Member State that was willing to submit to compulsory jurisdiction could do so at its option either with or without certain specified conditions.

The provisions set out above follow the terms of Article 34 in the Jurists' Committee's Draft,[3] subject to the modifications involved by the introduction of the optional principle. The following points should be noticed:

(1) The "optional clause," as it is called, whereby the compulsory jurisdiction is accepted, is annexed to the Protocol of Signature of the Statute,[4] and is only open to States which are Members of the League or mentioned in the Annex to the Covenant. The other States which are at present outside the League are precluded from adhering to the optional clause just as they are excluded from signing the Protocol of Signature[5] of the Statute itself. They may, however, under the Resolution of the Council laying down the conditions under which non-member States have access to the Court,[6] make a general declaration accepting compulsory jurisdiction as defined in Article 36 of the

[1] See pp. 60-61 *supra*.

[2] See Third Committee's Report, Art. 36, p. 325 *infra*.

[3] Set out at p. 295 *infra*.

[4] See p. 255 *infra*.

[5] Set out at p. 255 *infra*.

[6] See pp. 56-58 *supra*, and pp. 287-288 *infra*.

Statute, but such acceptance cannot, without special convention, be relied upon *vis-à-vis* States which have signed or may in the future sign the optional clause. In other words, Member States, by signing the optional clause, do not commit themselves to compulsory jurisdiction in relation to non-members, although they are free to extend its application to them by special agreement; but non-member States making the general declaration referred to above are bound *inter se*.

(2) A State accepting the optional clause is only amenable to the compulsory jurisdiction at the instance of another State which has accepted the same obligation. It is not open to any State which has preserved its own freedom of action to summon another before the Court by virtue of the other State's acceptance of the compulsory jurisdiction. The condition of reciprocity is expressly laid down and necessarily involved in the code: the jurisdiction extends only "in relation to any other Member or State accepting the same obligation."[1] It would, therefore, appear that where, as has occurred in several cases, States have accepted the optional clause "on condition of reciprocity,"[2] these words are unnecessary and presumably inserted *ex abundanti cautelae*.

(3) The optional clause is open for acceptance at any time; all or any of the States which at the time when the Statute was adopted were unwilling to take the step of so limiting their freedom of action can adhere to the optional clause whenever they see fit to do so. This gives a valuable flexibility to the system, inasmuch as the objection to compulsory jurisdiction, as was indicated above,[3] was not based on hostility to the principle itself but rather on its inopportunity at the time, in view of the present stage of international development and the experimental nature of the Court itself.

As to the definition in Article 36 of the disputes included within the compulsory system,[4] this is identical

[1] See p. 86 *supra*.
[2] See p. 256, footnote 1 *infra*.
[3] See pp. 12, 60 *supra*.
[4] See pp. 86-87 *supra*.

with the definition in Article 13 of the Covenant.[1] The only part of it that calls for comment is "(*b*) Any question of International Law." This may be criticized because of its wide and somewhat indefinite meaning. It must, however, be remembered that any State that may be desirous of limiting the scope of its obligation to submit to unilateral arraignment can except this, or any other of the four heads of the definition, under the words "in all *or any* of the classes of legal disputes."[2] A further opportunity of restricting the extent of the obligation accepted is afforded by the third paragraph of Article 36,[2] which enables a State to adhere to the optional clause subject to the condition of reciprocity on the part either of a given number of States, or of certain named States, or for a limited length of time.

A table will be found in the Appendix[3] showing the present position in regard to the acceptance of the compulsory system of jurisdiction.

Finally, the last paragraph of Article 36, to which reference has already been made,[4] must again be mentioned. Whatever may be its application to cases under paragraph 1 of the Article, it is clear that in the event of a dispute as to whether the Court has jurisdiction under the compulsory code the matter falls to be decided by the Court itself. This power is obviously necessary if the scheme laid down is to be effective. The questions that may arise as to whether any particular case is or is not within the system of jurisdiction accepted by the contesting States are numerous and difficult. Differences may, for instance, well arise as to whether a given dispute is "a legal dispute concerning" any one or more of the points referred to under (*a*) to (*d*), as well as in regard to the meaning of those points themselves. From an actual case which arose under a different provision,[5] it can be seen that the interpretation, for example, of the expression "inter-

[1] Set out at p. 232 *infra*.

[2] See p. 86 *supra*.

[3] See pp. 256-259 *infra*.

[4] See pp. 84-86 *supra* and 249 *infra*.

[5] See pp. 144-154 *infra*.

national obligation" may, in certain circumstances, be the subject of considerable controversy and argument.

The third and last matter[1] to be dealt with under the subject of jurisdiction is the law to be administered by the Court. This is dealt with in Article 38 of the Statute as follows:—

"The Court shall apply:

(1) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(2) International custom, as evidence of a general practice accepted as law;

(3) The general principles of law recognized by civilized nations;

(4) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."[2]

Subject to the single exception laid down in the last paragraph, this Article ensures that the decisions of the Court shall proceed and be based solely upon rules of law. It is this principle, more perhaps than any other single feature, that establishes the Court's position as a judicial, as distinct from an arbitral, tribunal. It is to be observed that neither the Permanent Court of Arbitration set up by The Hague Conventions nor any other previous international tribunal is or has been bound by such a provision.[3] The Court administers law, but where the relations of States *inter se* are concerned it is a matter of difficulty to define the law that is applicable. This has been accomplished in Article 38 with prudence and breadth of vision.

1. When the point in issue is governed by a treaty or convention between the States concerned the matter is plain: the rules laid down by the instrument agreed to

[1] See p. 53 *supra*.

[2] See p. 250 *infra*.

[3] The Hague Convention of October 18, 1907, relative to the International Prize Court, contained a precedent in Art. 7, but the Convention never became operative.

by both States are binding upon them; the Court's duty is limited to interpreting and applying those rules. But it is important to notice that the Statute has avoided giving to conventions the extended operation advocated by some writers on international law who have contended that where a given rule or principle is embodied in a number of conventions it thereby acquires force as international law binding upon the community of nations generally, even though they are not parties to the convention. The Statute is careful to limit the application to "rules expressly recognized by the contracting States."

2. Custom is the next source of international law; and here the existence of conventions extending over a long period and assented to by a large number of States may afford evidence of such a general practice as to point to acceptance of the provisions in question as law by all civilized States. But it must not be forgotten that due weight must also be given to another point of view: it may be that the parties have entered into a convention in order to negative the application of a contrary practice that would otherwise be legally valid. In each case it is for the Court to ascertain whether there exists an international custom having the force of law.

3. "The general principles of law recognized by civilized nations" may seem to be a somewhat vague phrase. It is to be observed that there is no limitation to *international* law; general principles of *law* are indicated, without restriction or qualification. It is submitted that the source of law here contemplated embraces those broad rules and maxims whether more particularly associated with the Roman or Anglo-Saxon systems of jurisprudence which are common to the good sense and conscience of the more enlightened portions of mankind and, therefore, universally recognized among civilized nations.

4. This head requires somewhat careful consideration. "Judicial decisions" and "the teachings of the most highly qualified publicists" are both admitted as sources of the law to be administered by the Court, but it seems clear that their relative importance will, generally speaking, be

different. "Judicial decisions" includes the decisions of national courts and of other international tribunals, but primarily refers to the decisions of the Permanent Court itself, as is shown by the reference to Article 59 of the Statute. That Article provides that "the decision of the Court has no binding force except between the parties and in respect of that particular case." The effect of the Court's decisions as a source of law are expressly declared by Article 38, head 4, to be subject to that qualification. This does not, however, mean that these decisions will not have authority as precedents. On the contrary, as has been more than once pointed out, it will be one of the Court's most important and valuable functions to build up a coherent international jurisprudence by means of its decisions. Moreover, it is part of the inherent nature of all judicial bodies to follow their own decisions in subsequent cases to which they are applicable. All that is meant by Article 59 is that a given decision is not as a matter of legal obligation binding upon States other than the immediate parties, and even upon them only in respect of the particular case under adjudication. It is submitted that the object of the reference to Article 59 in Article 38 is to make it clear that the Court itself is not rigidly bound by a previous decision in the sense that it is precluded from examining and dealing with each case as it arises upon its merits. It can be confidently stated that head 4 of Article 38 empowers the Court to follow its decisions and the principles resulting from them whenever they are properly applicable.

It would appear that in regard to relative weight the Court's decisions will come first, followed by the judgments of other international tribunals and of the highest national courts, such as the Supreme Court of the United States and our own Privy Council, and that the doctrines of learned writers on international law will come last, except perhaps in those instances where they are unanimous in their views. In regard to the teachings of these authorities it must not be forgotten, as has been stated by learned judges,[1]

[1] See *The Paquete Habana*, 175 U.S. 677, at p. 700; *West Rand Central Gold Mining Co.* v. *The King* L.R. [1905], 2 K.B. 391, at p. 407.

that valuable as they are as a means of ascertaining what the law in fact is they do not themselves constitute law. It may be pointed out that Article 38 as it stands in the Statute does not expressly provide that the Court shall apply the various sources of law in the order laid down, as was done in the Jurists' Committee's Draft.[1] It is plain, however, that the order in which the four heads are numbered is the natural order of their relative importance and would be generally adhered to by the Court. Although no narrow rigidity is contemplated, the four sources are successively applicable in a descending scale. Thus if there is no international convention decisive of the point in issue recourse would be had to custom; if there is no custom to the general principles of law; if these do not meet the case, judicial decisions and the teachings of publicists will be resorted to. But this is only true as a broad generalization; the heads are not mutually exclusive and tend to overlap.

Enough has been said on this subject for it to be appreciated that the Court is subject to the rule of law in dealing with and deciding the matters submitted to it, and it is important to bear in mind that this is true of disputes and questions referred to it for advisory opinion[2] equally with cases strictly contentious in character. In both classes of matters the Court is bound to act as a judicial tribunal and not as a body of arbitration or conciliation, and consequently, as already explained, the opinions as well as the judgments rank as authorities creating precedents in international law.

The last paragraph of Article 38 allows an exception (and it is the only one) to the above rule. It enables the Court if the parties so agree to decide a case *ex aequo et bono*. It may be noticed that this provision can never apply to an advisory case, inasmuch as there are, properly speaking, no "parties" before the Court. But a contested case, either at the request of the parties or, it would seem, at the instance of the Court itself, can be

[1] See Art. 35, p. 295 *infra*, and Assembly Sub-Committee's Report, Art. 38, p. 320.

[2] As to the advisory jurisdiction and procedure, see pp. 67-71 and 121-125

dealt with apart from principles of law "according to equity and good conscience," provided always that the parties agree to this course. The object of this exceptional provision is, no doubt, to meet cases where the issues are of a political character or otherwise unsuitable for decision on strictly legal grounds, and the parties desire to have recourse to the Court as a purely arbitral body, untrammelled by rules of law.

IV

PROCEDURE

THE procedure of the Court is laid down in the Statute[1] and in the Rules of Court[2] made thereunder.

Language.—The first matter to be considered is that of language: in a World Court, comprehending on the Bench members of diverse races and nationalities and contemplating as prospective parties all States, it is not easy to devise a fair and practicable scheme for mutual communication and understanding. Article 39 of the Statute adopts the following solution:—

"The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English the judgment will be delivered in English.

"In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

"The Court may, at the request of the parties, authorize a language other than French or English to be used."

The Jurists' Committee in their Draft Scheme had selected French alone as the official language,[3] but when the Scheme came before the Council of the League the question was carefully reconsidered and formed the subject of a separate Report,[4] which pointed out the import-

[1] Arts. 39-64, pp. 250-254 *infra*. [2] Arts. 32-75, pp. 270-280 *infra*.

[3] See Art. 37, p. 296 *infra*.

[4] See *Proceedings of the First Assembly, Meetings of the Committees*, p. 479.

ance of English as an international language and referred to the bi-lingual principle adopted for the great Peace Treaties and the League of Nations, with the result that the present provision was recommended.

It will be appreciated that Article 39 applies to all proceedings before the Court, both written and oral. In regard to the written proceedings, the Rules of Court provide that in the absence of an agreement between the parties that either French or English should be used, the documents are submitted in French or English at the option of the party submitting them.[1] No translation into the other language is necessary. Should the parties agree that the proceedings shall be conducted in one of the two official languages that language only must be employed.[1] A language other than French or English can only be used at any stage in the proceedings if (1) a request is made to that effect and (2) the Court authorizes it.[2] If this alternative is adopted, a translation into French *or* into English must be attached to the original of each document submitted.[3] The Registrar is not bound to make translations of the documents submitted,[4] and, therefore, the Court may be in possession of texts in one of the official languages only, but as a matter of practice translations are generally prepared by the Registry, so that there should be available to the members of the Court French and English texts of each document. As to the oral proceedings, the usual course is for each party to employ whichever of the two official languages is most convenient to it. Translation from the one to the other is made from time to time at short intervals as the statement or evidence proceeds. The duty of providing for such interpretation is laid upon the

[1] See Rules of Court, Art. 37, p. 271 *infra*.

[2] See Statute, Art. 39, last para., p. 250 *infra*. It would not appear that consent between the parties is essential; see *The S.S. Wimbledon*, *Publications of the Court*, Series C, No. 3, Vol. I., pp. 17-18.

[3] See Rules of Court, Art. 37, pp. 271-272 *infra*. But this provision is subject to variation by agreement between the parties provided the variation is adopted by the Court. See Rules of Court, Art. 32, p. 270 *infra*., and p. 101 *infra*.

[4] See Rules of Court, Art. 37, pp. 271-272 *infra*.

Registrar,[1] and, in fact, expert interpreters are permanently attached to the Court. If a language other than French or English is employed the party concerned must make the necessary arrangements for translation into one of the two official languages.[1] In this case the Court's official interpreter translates from the one official language into the other.[2]

It may be noticed that Article 44 of the Rules of Court, second paragraph,[3] states that "whenever a language other than French or English is employed, either under the terms of the third paragraph of Article 39 of the Statute *or in a particular instance*, the necessary arrangements for translation," etc. The words here italicized show that the use of a third language is contemplated in an instance other than that provided for by Article 39 of the Statute. This must, it would seem, be intended to refer to the incidental use of such language, in the course of a case where no special arrangement has been made to that effect—for instance, by a witness who happens to be ignorant of both the official languages.

Institution of Proceedings.—Article 40 of the Statute[4] defines in general terms the procedure to be followed for initiating litigation before the Court. "Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application."

These two methods of instituting proceedings correspond with the two branches of the Court's contentious jurisdiction: "voluntary" and "compulsory."[5] Where the jurisdiction arises by virtue of an agreement made *ad hoc* for the submission of the particular matter *(compromis)* the notification of that agreement puts the Court into motion. But where the jurisdiction is founded upon a general agreement conferring upon the parties the right

[1] See Rules of Court, Art. 44, p. 273 *infra*.
[2] See Rules of Court, Art. 44, first para. p. 273 *infra*.
[3] Set out at p. 273 *infra*.
[4] Set out at p. 250 *infra*.
[5] See pp. 61, 71-72, 75, 82, 86-89.

of unilateral arraignment, be it a Peace Treaty, a convention, or the optional clause in the Protocol of the Statute itself, either party can give the Court seizin of the case by means of an application. Both the notification of the special agreement and the application must be addressed to the Registrar, who is the channel for all communications to and from the Court.[1] In either case the subject of the dispute and the contesting parties must be indicated.[2] When a case is brought before the Court by means of a special agreement, the latter, or the document notifying the Court of the agreement, must mention the addresses selected at the seat of the Court to which notices and communications intended for the respective parties are to be sent[3]—in practice is the Legations of the parties at The Hague.

An application must include, in addition to an indication of the subject of the dispute and the names of the parties concerned, a succinct statement of facts, an indication of the claim and the address selected at the seat of the Court to which notices and communications are to be sent.[4] The first document sent in reply to the application must mention the address selected at the seat of the Court to which subsequent notices and communications in regard to the case are to be sent.[5]

Should the notification of a special agreement, or the application, contain a request that the case be referred to one of the special Chambers mentioned in Articles 26 or 27 of the Statute[6] (*i.e.* the Chambers for Labour cases and Transit and Communications cases, respectively) such request shall be complied with, provided that the parties are in agreement. Similarly, a request that technical assessors be attached to the Court, in accordance with

[1] See Rules of Court, Art. 25, p. 268 *infra*.

[2] See Statute, Art. 40, p. 250 *infra*.

[3] See Rules of Court, Art. 35, pp. 270-271 *infra*.

[4] See Rules of Court, Art. 35, pp. 270-271 *infra*; for a precedent of an application, see *The s.s. Wimbledon, Publications of the Court*, Series A, No. 1, pp. 6-8.

[5] See Rules of Court, Art. 35, pp. 270-271 *infra*.

[6] Set out at pp.245-247 *infra*, and see pp. 43-46 *supra*.

Article 27 of the Statute,[1] or that the case be referred to the Chamber for Summary Procedure,[2] shall also be granted; compliance with the latter request is, however, subject to the condition that the case does not refer to any of the questions indicated in Articles 26 and 27 of the Statute[3] (*i.e.* Labour and Transit-Communications). This condition, laid down by the Rules of Court,[3] merely gives effect to Articles 26 and 27 of the Statute,[4] which provides that Labour cases and cases relating to Transit and Communications shall be heard either by the appropriate special chamber or the full Court, thus excluding the possibility of either of these classes of cases being tried by the Chamber for Summary Procedure.

The Registrar must give notice to the Members of the League of Nations through the Secretary-General of the League of all proceedings, whether notifications of special agreements or applications, received by him.[5] The Member-States are thus apprised of all cases instituted, and if any of them considers that it has a legal interest which may be affected by the decision, it can ask the Court to be allowed to intervene.[6] Although under the Statute only Members of the League are given the right to be informed of the institution of cases, it is the practice of the Court to notify also non-member States.

The Registrar must also forthwith communicate to all members of the Court (*i.e.* both to the judges and deputy-judges) special agreements or applications which have been notified to him.[7]

[1] Set out at pp. 246-247 *infra*, and see pp. 45-46 *supra*.

[2] See Statute, Art. 29, p. 247 *infra*, and p. 47 *supra*.

[3] See Rules of Court, Art. 35, pp. 270-271 *infra*.

[4] Set out at pp. 245-247 *infra*.

[5] See Statute, Art. 40, third para., p. 250 *infra*. The paragraph, especially in the French text (" il en informe également "), may seem open to the construction that only applications are to be so notified, but it is submitted that having regard to the position of this provision as a separate paragraph the interpretation adopted above is the correct one. This view is confirmed by the right of intervention granted by Art. 62 (see pp. 110-113 *infra*). See also Jurists' Draft Scheme, Art. 38, p. 296 *infra*; and Assembly Sub-Committee's Report, Art. 40, p. 322 *infra*. It has been adopted in practice; see *Publications of the Court*, Series C, No. 6, pp. 114-115 (Doct. 4).

[6] See Statute, Art. 62, p. 254 *infra*, and pp. 110-113 *infra*.

[7] See Rules of Court, Art. 36, p. 271 *infra*.

Interim Protection.—After proceedings have been instituted as above the Court has power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. Pending the final decision, notice of the measures suggested must forthwith be given by the Court to the parties and the Council of the League.[1] If the Court is sitting at the time, this power is exercised by the Court itself, any point upon which there may be disagreement being decided by the majority of the judges present in the usual manner.[2] When the Court is not sitting, any measure for the preservation in the meantime of the respective rights of the parties is indicated by the President.[3] Any refusal by the parties to conform to the suggestions of the Court, or of the President, with regard to such measures, is placed on record.[3]

Agents and Counsel.—We now pass to the rules of procedure applicable to the conduct of cases brought before the Court as described above. Article 42 of the Statute[4] provides that the parties *shall* be represented by Agents and *may* have the assistance of Counsel or Advocates before the Court. In other words, an agent is obligatory, but counsel optional. The agent is the official representative of the party for the purpose of all communications to and from the Court prior to the actual hearing. At the hearing it is open to the parties if they so desire to entrust their agents with the task of arguing and conducting the case.

It may be mentioned that it has been the practice for counsel or agents appearing before the Court to wear the robes appertaining to their profession or office in their

[1] See Statute, Art. 41, p. 251 *infra*.

[2] See Statute, Art. 55, p. 253 *infra*, and Rules of Court, Art. 31, p. 269 *infra*. Although there is no provision in the Statute and Rules referring expressly to this point, it is submitted that the Articles cited justify the statement in the text.

[3] See Rules of Court, Art. 57, p. 276 *infra*.

[4] Set out at p. 251 *infra*.

own country. In the case of members of the English Bar the customary wig and gown are worn.[1]

General Scheme of Procedure.—The Statute provides[2] that

"The procedure shall consist of two parts: written and oral.

"The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

"These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

"A certified copy of every document produced by one party shall be communicated[3] to the other party.

"The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates."

It is submitted that the procedure here broadly outlined, being laid down by the Statute itself, is obligatory. All States that come before the Court, having assented to the Statute either by signature and ratification, or by declaration,[4] are bound by it and cannot by special agreement provide for an inconsistent procedure in any given case. But within the framework of this broad procedure it is open to the parties by agreement to propose special rules applicable to the particular case, subject to these rules being approved and adopted by the Court. This is recognized by the Rules of Court,[5] and must be borne in mind in considering the more detailed provisions with regard to the conduct of contentious cases therein contained.

The Court fixes time limits in each case by assigning a definite date for the completion of the various acts of procedure, having regard as far as possible to any agreement between the parties. It may extend time limits which it has fixed. It may likewise decide in certain circumstances that any proceedings taken after the expiration of a time limit shall be considered as valid. If the Court is

[1] Until recently gowns and bands, without wigs, were worn, but last year it was decided to adopt the complete costume. (See General Council of the Bar, Annual Statement, 1924.) K.C.'s do not wear full-bottomed wigs.

[2] See Art. 43, p. 251 *infra*.

[3] *i.e.* by the Court.

[4] See pp. 56, 57 *supra*.

[5] See Art. 32, p. 270 *infra*.

not sitting these powers are exercised by the President, subject to any subsequent decision of the Court.[1]

Written Procedure.—All documents submitted to the Court as an act of procedure must be accompanied by not less than thirty printed copies certified correct. The President may order additional copies to be supplied.[2] In practice, fifty copies have been required.[3]

In cases in which proceedings have been instituted by means of a special agreement the following documents may be presented in the order stated below, provided that no agreement to the contrary has been concluded between the parties:

A Case, submitted by each party within the same limit of time (*i.e.* submitted simultaneously and independently of each other; not by way of claim and defence).

A Counter-case, submitted in the same way.

A Reply, submitted in the same way.

When proceedings are instituted by means of an application, failing any agreement to the contrary between the parties, the documents shall be presented in the order stated below:

The Case by the applicant;
The Counter-case by the respondent;
The Reply by the applicant;
The Rejoinder by the respondent.[4]

It will be appreciated that there is a clear distinction between the procedure applicable in the two classes of proceedings. In both cases, it is open to the parties by agreement to vary the system of pleading,[5] but in the

[1] See Rules of Court, Art. 33, p. 270 *infra*.

[2] See Rules of Court, Art. 34, p. 270 *infra*.

[3] See *The s.s. Wimbledon*, *Publications of the Court*, Series C, No. 3, vol. i. pp. 228-229, 231, 234, 236.

[4] See Rules of Court, Art. 39, p. 272 *infra*. For a precedent of each of these documents see *Publications of the Court*, Series C, No. 3, supplementary volume (*The s.s. Wimbledon*).

[5] In the case of the *Tunis and Morocco Nationality Decrees* (p. 144 *infra*), for example, it was agreed to limit the written procedure to cases and counter-cases.

absence of such agreement, where the case is instituted by special agreement the procedure is analogous to that followed in appeals to the House of Lords and Privy Council, with the addition of Counter-cases and Replies, whereas in matters arising under the compulsory jurisdiction of the Court, set in motion by the application of a single party, the procedure approximates more closely to that followed in an action in a Court of first instance. The reason for this difference is that in the former case the dispute will of necessity have formed the subject not only of considerable negotiation in the course of which the material facts will have become fully known to both parties, but also of agreement defining the issues.

Cases must contain:

1. A statement of the facts on which the claim is based;
2. A statement of law;
3. A statement of conclusions;
4. A list of the documents in support; these documents must be attached to the case.

Counter-cases must contain:

1. The admission or contestation of the facts stated in the other side's case;
2. A statement of additional facts, if any;
3. A statement of law;
4. Conclusions based on the facts stated; these conclusions may include counter-claims, in so far as the latter come within the jurisdiction of the Court.[1]
5. A list of the documents in support; these documents must be attached to the counter-case.[2]

The matter of the language in which these documents are to be drawn up is dealt with in Article 37 of the Rules of Court,[3] and has been referred to above.[4]

[1] This would be so if the counter-claims related to a matter specially provided for in a treaty or convention in force within the meaning of Art. 36, first para., of the Statute (see pp. 61, 62-64 *supra*), or to a dispute within the second para. of Art. 36, provided that the parties had both accepted the compulsory jurisdiction of the Court (see pp. 86-89 *supra*).

[2] See Rules of Court, Art. 40, pp. 272-273 *infra*.

[3] Set out at pp. 271-272 *infra*.

[4] See p. 96 *supra*.

The Statute itself provides, as already mentioned, for the communication by the Court of a certified copy of every document produced by one party to the other party.[1] The Rules of Court contain a further provision: that the Court or the President, if the Court is not sitting, may, after hearing the parties, order the Registrar to hold the Cases and Counter-cases of each suit at the disposal of the Government of any State which is entitled to appear before the Court.[2] The object of this rule is, first, to enable States to ascertain whether or not they have an interest in a given case submitted to the Court by other parties, such as would entitle them to intervene under Article 62 or 63 of the Statute,[3] and, secondly, to assist them in framing their case after intervention. In order to obtain inspection of the documents referred to the Government in question must satisfy the Court, or the President if the Court is not sitting, that its request is justified. It rests with the Court (or President) and entirely within its discretion, to grant or refuse inspection, so that the danger of improper disclosure is guarded against.[4] The expression "any State which is entitled to appear before the Court" means, it is submitted, in addition to the Members of the League and the States mentioned in the Annex to the Covenant, any State which has deposited with the Registrar a declaration in accordance with the Council's Resolution under Article 35, para. 2, of the Statute.[5]

The Registrar must forward to each of the members of the Court (*i.e.* the judges and deputy-judges) a copy of all documents in the case as he receives them.[6]

Upon the termination of the written proceedings (*i.e.* when the last of the documents mentioned above, or the last document in whatever procedure has been substituted by agreement, has been presented) the President fixes a date for the commencement of the oral proceedings.[7]

[1] See p. 101 *supra*. [2] See Rules of Court, Art. 38, p. 272 *infra*.
[3] Set out at p. 254 *infra*, and see pp. 110-113 *infra*.
[4] See *Publications of the Court*, Series D, pp. 205-206, 504-505.
[5] See pp. 56-65 *supra*. [6] See Rules of Court, Art. 42, p. 273 *infra*.
[7] *Ibid.* Art. 41, p. 273 *infra*.

Oral Proceedings (other than Evidence).—In the case of a public sitting it is the duty of the Registrar to publish in the press all necessary information as to the date and hour fixed.[1] In practice, it is customary for the Registrar, in addition, to notify the Government agents by letter or telegram.

The Statute itself contains a number of provisions governing the conditions applicable to the hearings before the Court. With the exception of the rules relating to evidence, which are referred to separately below, these provisions are as follows:

(1) "The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside." [2]

(2) "The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted." [3]

The latter Article makes publicity the rule, although it allows sittings *in camera* as an exceptional measure. This is the reverse of the principle adopted in The Hague Conventions for the procedure of the Permanent Court of Arbitration,[4] and marks the judicial character of the new Court. In order that a hearing may be held *in camera* one of two conditions must be fulfilled; either (*a*) the Court itself must so decide or (*b*) both parties must demand it. Up to the present time, all the cases with which the Court has dealt have been heard throughout in public. It may be mentioned that the wording of the Article cited above was substituted for a somewhat more stringent provision in favour of publicity, by the Assembly Sub-Committee for the reasons stated in their Report.[5]

[1] See Rules of Court, Art. 43, p. 273 *infra*.

[2] Art. 45, p. 251 *infra*.

[3] Art. 46, p. 251 *infra*.

[4] See Art. 41 of Convention of 1899, and Art. 66 of the Convention of 1907.

[5] See Report, Art. 46, p. 322 *infra*; and cf. Jurists' Draft Scheme, Art. 45, p. 297 *infra*.

(3) "Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record."[1]

Article 55 of the Rules of Court lays down in detail what the minutes must include.[2]

(4) "The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence."[3]

These provisions are supplemented by the Rules of Court. It is there provided that the Court shall determine in each case whether the representatives of the parties shall address the Court before or after the production of the evidence, the parties, however, retaining the right to comment on the evidence given;[4] and, further, that the order in which the agents, advocates, or counsel shall be called upon to speak shall be determined by the Court, failing an agreement between the parties.[5] In connection with the last mentioned rule, it should be stated that it has been the practice of the Court to allow two speeches to each party; viz. an opening speech on each side, followed by a reply on behalf of the first party and a rejoinder by the second.[6]

The Rules of Court[7] provide that the Court shall decide in each case whether verbatim records of all or certain portions of the speeches shall be prepared for its own use. In practice, it has been the invariable rule for the Court's official shorthand writers to record the whole of

[1] Art. 47, p. 252 *infra*.

[2] See p. 275 *infra*.

[3] Art. 48, p. 252 *infra*.

[4] See Rules of Court, Art. 45, p. 274 *infra*.

[5] *Ibid.* Art. 46, p. 274 *infra*.

[6] See the case of the *Tunis and Morocco Nationality Decrees*, *Publications of the Court*, Series C, No. 2, pp. 2-11. See also *The s.s. Wimbledon*, *Publications of the Court*, Series C, pp. 13-22. In this case there were several parties in the same interest as applicants, and each of them was allowed an opening speech. The reply was made by the French representative on behalf of the applicants, followed by a rejoinder on behalf of Germany, the respondent.

[7] See Art. 54, second para., p. 275 *infra*.

the oral proceedings, transcripts being supplied to the members of the Court and also, by the courtesy of the Registrar, to the counsel, or agents, engaged in the case.

(5) "The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal." [1]

Evidence and Witnesses.—In sufficient time before the opening of the oral proceedings, each party must inform the Court and the other parties of all evidence which it intends to produce, together with the names, Christian names, description, and residence of the witnesses whom it desires to be heard, and must further give a general indication of the point or points to which the evidence is to refer.[2]

In addition to the right which the parties possess of adducing evidence, both documentary and oral, a power appears to be possessed by the Court itself to procure evidence. Article 44 of the Statute[3] provides that

"for the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

"The same provision shall apply whenever steps are to be taken to procure evidence on the spot."

It is submitted that the last sentence here cited refers to steps taken *by the Court* to procure evidence. Having regard to the language of the earlier part of the Article it is only an act of the Court (and not of the parties) that can be regarded as covered by the words "the same provision shall apply" in the last sentence. Moreover, it can hardly have been intended to bind States that are parties to a case before the Court to the particular method of procedure laid down (viz. direct application to the Government of the State upon whose territory the evidence is to

[1] Statute, Art. 49, p. 252 *infra*.

[2] See Rules of Court, Art. 47, p. 274 *infra*. In regard to documentary evidence the notice may be contained in the written pleadings themselves.

[3] See p. 251 *infra*.

be procured) by such an indirect and indeterminate provision. The above interpretation is, also, confirmed by the terms of Article 48 of the Rules of Court.[1] Assuming that the view presented above is correct it is to be anticipated that the power in question would be very sparingly exercised.

In connection with the provision under discussion, Article 50 of the Statute should be noticed, which states that "the Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select with the task of carrying out an enquiry or giving an expert opinion." This enables the Court of its own motion, either before or during the hearing of a case, to obtain such information as it may deem necessary to supplement that supplied by the parties, or to clear up any point left in doubt or obscurity, whether it be upon a matter of fact, or technical knowledge. It is submitted that Article 44 (set out on p. 107 above) would not apply to a person or body acting under Article 50, but such person or body would be free to proceed with its enquiry as it thought best. Any report or record of an enquiry carried out at the request of the Court, under the terms of Article 50 of the Statute, and reports furnished to the Court by experts in accordance with the same Article, must be forthwith communicated to the parties by the Court.[2]

In connection with the powers given to the Court in regard to procuring evidence and information of its own motion, it is necessary to notice the further faculty conferred upon it of inviting the parties to call witnesses or produce other evidence. The Rules of Court provide that the Court may, subject to the provisions of Article 44 of the Statute, invite the parties to call witnesses, or may call for the production of any other evidence on points of fact in regard to which the parties are not in agreement.[3] This

[1] Set out at p. 274 *infra*, and see below.

[2] See Rules of Court, Art. 53, p. 275 *infra*.

[3] See Art. 48, p. 274 *infra*.

power is additional to those mentioned above, and enables the Court to adopt the course, which would usually be the more convenient one, of obtaining the further evidence required through the parties themselves. The indemnities of witnesses who appear at the instance of the Court are paid out of the funds of the Court.[1]

Having considered the various ways in which evidence can be obtained for presentation to the Court, we pass to the procedure laid down for the examination of witnesses. The Statute provides that "during the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in its rules," [2] and the Rules of Court provide that witnesses shall be examined by the representatives of the parties under the control of the President.[3] Questions may also be put to them by the President and afterwards by the judges.[3] Before giving his evidence in Court, each witness must make a solemn declaration in the prescribed form to speak the truth, the whole truth, and nothing but the truth.[4] From the fact that these rules are unconditionally applicable to all witnesses, it is submitted that the distinction made in the Statute between "witnesses" and "experts" [5] has not been given special effect to in the Rules and that all witnesses, whether expert or otherwise, are subject to the same conditions. Power is given to the Court (or the President should the Court not be sitting) to have witnesses examined out of Court, either at the request of one of the parties or on its own initiative.[6]

After the Court has received the proofs and evidence within the time specified for the purpose,[7] it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.[8]

[1] See Rules of Court, Art. 52, p. 275 *infra*.
[2] See Statute, Art. 51, p. 252 *infra*.
[3] See Rules of Court, Art. 51, p. 275 *infra*.
[4] *Ibid.* Art. 50, p. 274 *infra*.
[5] See Statute, Art. 51, p. 252 *infra*.
[6] See Rules of Court, Art. 49, p. 274 *infra*.
[7] See Rules of Court, Art. 33, p. 270 *infra*, and pp. 101-102 *supra*.
[8] Statute, Art. 52, p. 252 *infra*.

A record is made of the oral evidence. The portion containing the evidence of each witness must be read over to him and approved by him.[1]

Bill of Costs.—Before the oral proceedings are concluded each party may present his bill of costs.[2] In accordance with the Statute[3] the normal course is for each party to bear its own costs, but the Court has power to give judgment with costs, and the rule just cited enables the parties to place the Court in possession of the necessary information for making an order as to costs, where they desire to invite the Court to exercise its discretion in this matter.

Default of Appearance.—Whenever one of the parties does not appear or fails to defend his case, the other party may call upon the Court to decide in favour of his claim, but the Court must before doing so satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37 of the Statute,[4] but also that the claim is well founded in fact and law.[5] This provision is primarily directed to cases arising under the Court's compulsory jurisdiction, but it is capable of applying also under the voluntary jurisdiction, as a State might agree to submit a given dispute and subsequently decline to proceed with the matter or to defend its case. The system adopted by the Statute in the Article quoted above is modelled upon the practice prevailing in English law, and also in the procedure of the Supreme Court of the United States.

Intervention.—Article 62 of the Statute[6] provides as follows:

"Should a State consider that it has an interest of a legal nature which may be affected by the decision in a case, it may submit a request to the Court to be permitted to intervene

[1] See Rules of Court, Art. 54, first para., p. 275 *infra*. It may be mentioned that up to the present it has not been found necessary to adduce oral evidence in any case,

[2] *Ibid.* Art. 56, p. 275 *infra*.

[3] See Art. 64, p. 254 *infra*, and pp. 119-120 *infra*.

[4] Set out at p. 249 *infra*; and see pp. 61-90 *supra*.

[5] See Statute, Art. 53, pp. 252-253 *infra*.

[6] See p. 254 *infra*.

as a third party. It will be for the Court to decide upon this request."

The Rules of Court lay down the procedure to be followed by the State desirous of availing itself of this right. Article 58[1] states that an application for permission to intervene, under the terms of Article 62 of the Statute, must be communicated to the Registrar at latest before the commencement of the oral proceedings. Nevertheless the Court may, in exceptional circumstances, consider an application submitted at a later stage. Article 59[2] provides that the application referred to in the preceding Article shall contain:

1. A specification of the case in which the applicant desires to intervene.
2. A statement of law and of fact justifying intervention.
3. A list of documents in support of the application; these documents must be attached.

Such application shall be immediately communicated (by the Court) to the parties, who shall send to the Registrar any observations which they may desire to make within a period to be fixed by the Court, or by the President, should the Court not be sitting.

Article 63 of the Statute[3] provides that

"Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith. Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it."

Article 60 of the Rules of Court directs that any State desiring to intervene, under the terms of Article 63 of the Statute, shall inform the Registrar in writing at latest before the commencement of the oral proceedings. The Court, or the President if the Court is not sitting, shall take the necessary steps to enable the intervening State to

[1] See p. 276 *infra*.

[2] See p. 276 *infra*.

[3] See p. 254 *infra*.

inspect the documents in the case, in so far as they relate to the interpretation of the convention in question, and to submit its observations thereon to the Court.

This code of rules as to intervention has been authoritatively commented upon by the Court itself as follows:

"The Statute . . . provides for two sets of circumstances and two different forms in which intervention is possible on the part of States which are not from the outset concerned in a suit brought before it.

"The first of these forms of intervention is that dealt with in Article 62 of the Statute and Articles 58 and 59 of the Rules of Court; it is based on an interest of a legal nature advanced by the intervening party and the Court should only admit such intervention if, in its opinion, the existence of this interest is sufficiently demonstrated.

"On the other hand, however, when the object of the suit before the Court is the interpretation of an international convention, any State which is a party to this convention has, under Article 63 of the Statute, the right to intervene in the proceedings instituted by others, and, should it make use of the right thus accorded, the construction given by the judgment of the Court will be equally binding upon it as upon the original applicant parties." [1]

The above observations were made by the Court in the course of its decision upon the application of Poland to intervene in the case of the s.s. *Wimbledon*.[2] The Polish Government had originally based its application upon Article 62 of the Statute,[3] on the ground that the cargo of the vessel was destined for that Government, but subsequently abandoned this ground and relied upon Article 63, by reason of Poland being a party to the Treaty of Versailles, the interpretation of which was in question in the case.[4] The Court, in giving its decision upon the application, recognized Poland's right to intervene under Article 63 and refrained from expressing an opinion as to whether she was also entitled to intervene under Article 62.[5]

[1] See *The s.s. Wimbledon* (Question of Intervention by Poland), *Publications of the Court*, Series A, No. 1, at p. 12.

[2] This case is dealt with at pp. 164-175 *infra*.

[3] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 102-104.

[4] *Ibid.* pp. 116-118; see also pp. 106-108.

[5] See *Publications of the Court*, Series A, No. 1, pp. 11-13.

It will be observed that whilst intervention under Article 62 is always conditional upon the possession, recognized by the Court, of an interest of a legal (as opposed to political) nature, which may be affected by the decision of the case, such interest may arise either out of an exclusive right (*i.e.* a right different from those of either of the existing parties) or a right common to the intervener and one or other of those parties. In other words, although the Article refers to intervention "as a third party" this does not imply that the intervener necessarily occupies a position independent of the plaintiff or defendant (to use the terms of municipal law); he may either be a "third party" in the sense of a party claiming a right exclusive of those of the plaintiff and defendant, or he may be a "third party" in the sense of a party additional to the original parties, but claiming the same right as the plaintiff or the defendant. Under Article 63 the right to intervene arises by virtue of the intervening State being a party to the convention the interpretation of which is in issue, and, provided this condition is present, the right is absolute. The intervener will, no doubt, generally range himself upon the side of one of the existing parties, but there would not appear to be anything to prevent him, in this case also, from occupying an intermediate position, supposing that it was desired to put forward a third interpretation of the convention in question. It should be observed that if the intervening State on becoming a party does not claim in the same interest as one or other of the original parties, it is entitled, under and subject to the provisions of Article 31 of the Statute,[1] to the presence of a judge of its nationality upon the Bench.

Agreement.—The Rules of Court provide[2] that if the parties to any case conclude an agreement regarding the settlement of the dispute and give written notice of such agreement to the Court before the close of the proceedings,

[1] Set out at p. 247 *infra*; and see pp. 49-51 *supra*.

[2] See Art. 61, p. 277 *infra*.

the Court shall officially record the conclusion of the agreement. Should the parties by mutual agreement notify the Court in writing that they intend to break off proceedings, the Court shall officially record the fact and proceedings shall be terminated.

The first part of this rule corresponds to the practice prevailing in national Courts with respect to the settlement of actions, but the second part is peculiar to international litigation, and follows from the principle of the sovereignty of States. As has been pointed out in an earlier chapter, one of the results of sovereignty is that the jurisdiction of the Court is founded upon agreement by the States concerned to submit to it, whether such agreement be general or particular, and it is a necessary corollary that proceedings can be broken off in any case where both parties agree to do so.

Judgment.—When, subject to the control of the Court, the agents, advocates, and counsel have completed their presentation of the case, the President declares the proceedings closed. The Court then withdraws to consider its judgment. The deliberations of the Court take place in private and remain secret.[1]

All questions are decided by a majority of the judges present at the hearing. In the event of an equality of votes, the President or his deputy[2] has a casting vote.[3]

The judgment must state the reasons on which it is based. It must contain the names of the judges who have taken part in the decision.[4] The provision for reasons to be included in the judgment is, of course, essential, not only for the purpose of satisfying the contesting States and public opinion, but also to enable the great function of the Court as a source of international jurisprudence to be fulfilled.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges

[1] See Statute, Art. 54, p. 253 *infra*.
[2] See Statute, Art. 45, p. 251 *infra*.
[3] See Statute, Art. 55, p. 253 *infra*.
[4] See Statute, Art. 56, p. 253 *infra*.

are entitled to deliver a separate opinion.[1] The position of dissenting judges was the subject of considerable discussion and difference of opinion in the course of the preparation of the Statute. The Jurists' Committee's Draft restricted their right to having the fact of their dissent mentioned in the judgment, without allowing the reasons therefor to be expressed,[2] but there were eminent authorities, both within and outside the Committee, who advocated that even this limited right should not be accorded and that the decision should be issued in every instance as the judgment of the Court without any mention of possible dissenting voices within the body of judges.[3] Although there is no doubt much to recommend this view in connection with an international tribunal, the Council of the League proposed that not only the fact of dissent but also the reasons for it should be recorded, on the ground that by such a course the play of different judicial lines of thought would appear clearly.[4] This solution was endorsed by the Assembly of the League, it being noted in the Sub-Committee's Report that it was strongly advocated by the Anglo-Saxon jurists.[5] It may be well to make it clear that each judge does not give a separate judgment as in our English Courts. There is one judgment only, namely, that in which all or the majority of the members of the Court concur, but if any of the judges dissent in whole or in part from that judgment they are entitled to have their opinion, with the reasons upon which it is based, recorded.

The judgment must be signed by the President and by the Registrar. It must be read in open Court, due notice having been given to the agents.[6] This provision ensures

[1] See Statute, Art. 57, p. 253 *infra*.

[2] See Draft Scheme, Art. 56, p. 298 *infra*.

[3] Jurists' Committee's Report, *Procès Verbaux of the Proceedings of the Committee*, pp. 742-743.

[4] See M. Bourgeois' Report, p. 309 *infra*.

[5] See Art. 57, p. 323 *infra*.

[6] See Statute, Art. 58, p. 253 *infra*. The dissenting opinions are also read; see *Publications of the Court*, Series C, No. 3, vol. i. p. 37.

that the judgment of the Court shall be public in every case, even if under Article 46 of the Statute[1] the hearings should have taken place *in camera*.

The decision of the Court has no binding force except between the parties and in respect of that particular case.[2] This provision was introduced into the Statute on the proposal of the Council,[3] its object being to give express recognition to the principle implied in Article 61 of the Jurists' Draft Scheme[4] and in Article 63 of the Statute.[5] As already mentioned,[6] the effect of the provision is not to detract from the force of the Court's decisions as precedents, guiding and indeed binding the Court in subsequent cases to which they may be applicable, but to make it plain that only the parties to a given case are legally bound by the judgment in that case, even though the principles laid down may be applicable to a dispute between States neither, or only one, of which were parties to the case.

The judgment is final and without appeal. In the event of a dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.[7]

The Rules of Court contain some further and more detailed provisions in regard to judgments. They are as follows:

The judgment must contain:

1. The date on which it is pronounced;
2. The names of the judges participating;
3. The names and styles of the parties;
4. The names of the agents of the parties;
5. The conclusions of the parties;
6. The matters of fact;
7. The reasons in point of law;
8. The operative provisions of the judgment;

[1] Set out at p. 251 *infra*; and see p. 105 *supra*.

[2] Statute, Art. 59, p. 253 *infra*.

[3] See M. Bourgeois' Report, p. 308 *infra*.

[4] Set out at p. 299 *infra*.

[5] Set out at p. 254 *infra*, and see pp. 110-113 *supra*.

[6] See p. 92 *supra*.

[7] Statute, Art. 60, p. 254 *infra*.

9. The decision, if any, referred to in Article 64 of the Statute [as to costs[1]].

The opinions of judges who dissent from the judgment must be attached thereto should they express a desire to that effect.[2] It may be mentioned that in practice the Court whilst adhering to these provisions has adopted broadly the form of judgment customary in English and American courts in preference to the more technical pattern followed in the Latin countries.[3]

After having been read in open Court the text of the judgment shall forthwith be communicated to all parties concerned and to the Secretary-General of the League of Nations.[4]

The judgment shall be regarded as taking effect on the day on which it is read in open Court, in accordance with Article 58 of the Statute.[5]

A collection of the judgments of the Court shall be printed and published under the responsibility of the Court.[6]

Revision.—Article 61 of the Statute[7] provides that

"an application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

"The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

[1] See pp. 119-120 *infra.*

[2] See Rules of Court, Art. 62, p. 277 *infra.*

[3] See *e.g. The s.s. Wimbledon, Publications of the Court*, Series A, No. 1.

[4] Rules of Court, Art. 63, p. 277 *infra.*

[5] Rules of Court, Art. 64, p. 277 *infra.* Art. 58 of the Statute is set out on p. 253 *infra*, and see pp. 115-116 *supra.*

[6] This collection is Series A of the Court's publications issued by A. W. Sijthoffs' Publishing Co., Leyden (English Agents: Butterworth & Co., Bell Yard, London, W.C. 2). In addition, the speeches in, and the documents bearing upon, the cases heard by the Court are published in Series C.

[7] See p. 254 *infra.*

"The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

"The application for revision must be made at latest within six months of the discovery of the new fact.

"No application for revision may be made after the lapse of ten years from the date of the sentence."

In The Hague Conventions of 1899 and 1907 relating to the Permanent Court of Arbitration it was stipulated that the right to apply for revision of the award must be reserved in the submission to arbitration *(compromis)*,[1] by which also the period within which the application could be made had to be fixed. In the Statute of the Permanent Court of International Justice it was necessary, in view of its judicial character, to determine the conditions in which revision should be permitted regardless of any arrangement between the parties. The right conferred by Article 61 of the Statute is, therefore, independent of the consent of the other party to the case. Provided that the State applying for revision satisfies the Court that the requisite conditions apply and fulfils the other terms laid down by the Article, such State is entitled to a decision upon its application as of right, and the Court's jurisdiction to give such decision is absolute.

The Rules of Court[2] provide that

"application for revision shall be made in the same form as the application mentioned in Article 40 of the Statute.[3]

"It shall contain :

(1) the reference to the judgment impeached ;
(2) the fact on which the application is based ;
(3) a list of the documents in support ; these documents shall be attached.

"It shall be the duty of the Registrar to give immediate notice of an application for revision to the other parties concerned. The latter may submit observations within a time limit to be fixed by the Court, or by the President should the Court not be sitting.

"If the judgment impeached was pronounced by the full Court, the application for revision shall also be dealt with by the full

[1] See Convention of 1899, Art. 55; Convention of 1906, Art. 83.

[2] Art. 66, p. 278 *infra*.

[3] Set out at p. 250 *infra*, and see pp. 97-99 *supra*.

Court. If the judgment impeached was pronounced by one of the Chambers mentioned in Articles 26, 27 or 29 of the Statute,[1] the application for revision shall be dealt with by the same Chamber. The provisions of Article 13 of the Statute [2] shall apply in all cases.

"If the Court, under the third paragraph of Article 61 of the Statute,[3] makes a special order rendering the admission of the application conditional upon previous compliance with the terms of the judgment impeached, this condition shall be immediately communicated to the applicant by the Registrar, and proceedings in revision shall be stayed pending receipt by the Registrar of proof of previous compliance with the original judgment and until such proof shall have been accepted by the Court."

The only part of this rule that seems to call for comment is the sentence in the third paragraph set out above: "The provisions of Article 13 of the Statute shall apply in all cases."

Article 13 lays down that judges shall finish any cases which they may have begun even though they have ceased to hold office and are replaced.[4] The sentence cited appears when read with its context to mean that the judges who heard the original case shall be called upon to hear the application for revision notwithstanding that they may have ceased to be members of the Court. In view of the fact that revision can be applied for at any time within ten years from the date of the judgment,[5] this provision is a notable extension of the normal application of Article 13 of the Statute.

Costs.—Unless otherwise decided by the Court, each party shall bear its own costs.[6]

It is to be observed that the parties, as such, do not contribute to the expenses of the Court, except when they are not Members of the League of Nations, in which case the Court fixes the amount of their contribution.[7] Those

[1] *i.e.* the Chamber for Labour cases, Transit and Communications cases, and Summary Procedure, respectively. See pp. 43-47 *supra*, and pp. 245-247 *infra*.

[2] Set out at p. 243 *infra*.

[3] See pp. 117-118 *supra*.

[4] See Art. 13, p. 243 *infra*.

[5] See pp. 117-118.

[6] Statute, Art. 64, p. 254 *infra*.

[7] See Statute, Art. 35, p. 249 *infra*, and pp. 52, 58 *supra*.

States that are Members of the League contribute to the expenses of the Court through, and in virtue of, their Membership of the League.[1] In regard to the costs of the parties, the general rule, as laid down in the above provision, is that each party bears its own, but in exceptional cases the Court has power to make a special order. It should, however, be noticed that there is nothing to preclude the parties from dividing the costs according to the terms of an agreement between themselves.[2]

Summary Procedure.—Provision for a special Chamber of three judges to hear and determine cases by summary procedure is made by Article 29 of the Statute,[3] where it is indicated that this special method of adjudication only comes into operation at the request of the contesting parties. In pursuance of Article 30 of the Statute,[4] the following rules with regard to summary procedure are laid down by the Rules of Court:

"Upon receipt by the Registrar of the document instituting proceedings in a case which, by virtue of an agreement between the parties, is to be dealt with by summary procedure, the President shall convene as soon as possible the Chamber referred to in Article 29 of the Statute."[5]

"The proceedings are opened by the presentation of a case by each party. These cases shall be communicated by the Registrar to the members of the Chamber and to the opposing party.

"The cases shall contain reference to all evidence which the parties may desire to produce.

"Should the Chamber consider that the cases do not furnish adequate information, it may, in the absence of an agreement to the contrary between the parties, institute oral proceedings. It shall fix a date for the commencement of the oral proceedings.

"At the hearing, the Chamber shall call upon the parties to supply oral explanations. It may sanction the production of any evidence mentioned in the cases.

[1] See p. 52 *supra*.

[2] See Assembly Sub-Committee's Report, Art. 64, p. 324 *infra*.

[3] Set out at p. 247 *infra*, and see p. 47 *supra*.

[4] Set out at p. 247 *infra*

[5] Rules of Court, Art. 68, p. 279 *infra*.

"If it is desired that witnesses or experts whose names are mentioned in the case should be heard, such witnesses or experts must be available to appear before the Chamber when required." [1]

"The judgment is the judgment of the Court rendered in the Chamber of Summary procedure. It shall be read at a public sitting of the Chamber." [2]

Except as provided above the rules of procedure before the full Court apply to summary procedure.[3] In particular, the cases presented by the parties should contain in addition to a reference to the evidence, as prescribed above, the various matters specified in Article 40 of the Rules of Court,[4] although their statement may, if necessary, be more condensed. In the absence of an arrangement to the contrary, there are no counter-cases or replies. It will be noticed that, under the summary procedure of the Court, oral proceedings can be dispensed with, but this course would not be adopted if the cases presented by the parties showed that there was a conflict of evidence upon any material point and that the parties, or one of them, desired to submit oral testimony in regard to such point.[5]

Advisory Procedure.—The rules under this head[6] are of a general character. As will be seen from the next chapter,[7] the advisory jurisdiction of the Court has, in practice, proved to be of great importance. Cases involving serious international disputes and requiring elaborate argument have been referred to the Court for advisory opinion, and up to the present this branch of its jurisdiction has played a larger part in the Court's activity relatively to the contentious jurisdiction than was, perhaps, anticipated

[1] Rules of Court, Art. 69, p. 279 *infra*.

[2] Rules of Court, Art. 70, p. 279 *infra*.

[3] Rules of Court, Art. 67, p. 278 *infra*.

[4] Set out at pp. 272-273 *infra*, and see pp. 102-103 *supra*.

[5] For an actual case heard by the Court under the summary procedure, see *Interpretation of the Treaty of Neuilly, Art.* 179, *Annex. para.* 4, pp. 216-218 *infra*.

[6] For a discussion of the Court's advisory functions, see pp. 67-71 *supra*.

[7] See pp. 126-218 *infra*.

when the rules were framed. Nevertheless, they have proved adequate for their purpose. These rules consist of four Articles (71-74) in the Rules of Court.[1]

Article 71 provides that

"advisory opinions shall be given after deliberation by the full Court.

"The opinions of dissenting judges may, at their request, be attached to the opinion of the Court." [2]

The first paragraph gives effect to Article 25 of the Statute.[3] The provision for the expression of dissenting opinions follows the analogy of the contentious procedure whereby dissenting judges are allowed to state their reasons.[4] So far, however, although the advisory opinions have not always been unanimous, the dissenting judges have not availed themselves fully of the right conferred upon them by the above rule, but have contented themselves with recording the fact of their dissent.[5]

Article 72 provides as follows:

"Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or Council.

"The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question." [6]

Up to the present the reference of disputes or questions to the Court for advisory opinion under Article 14 of the Covenant[7] has always been made by the Council. The regular course is for a resolution to be passed for this purpose, which in turn is transmitted to the Court by the Secretary-General of the League with a formal request,

[1] See pp. 279-280 *infra*.

[2] See p. 279 *infra*.

[3] Set out at p. 245 *infra*, and see pp. 42-43, 68 *supra*.

[4] See pp. 114-115 *supra*.

[5] See pp. 138, 162 *infra*, but see also p. 197 *infra*.

[6] See p. 280 *infra*.

[7] See p. 232 *infra*, and pp. 67-68 *supra*.

signed by him, for the Court's opinion.[1] The resolution itself sometimes states the facts giving rise to the points in issue, but in other instances these are set forth in accompanying documents.[2] The actual question submitted to the Court is always stated in the resolution and either repeated *in extenso* or incorporated by reference in the request.[3] Together with the resolution and request the Secretary-General in accordance with the above rule sends to the Court all the documents which appear to be relevant, but it is always open to the Court to apply to him for any further information which it may require. It has been the practice for the Council's resolution to authorize the Secretary-General, in addition to giving all necessary assistance, to take steps, if required, to be represented before the Court.[4] It is to be noticed, however, that this faculty has never been made use of. If it ever should be, the rôle of the Secretary-General would be limited to giving information; he could in no sense take part in argument as an interested "party."[5]

Article 73 provides that:

"the Registrar shall forthwith give notice of the request for an advisory opinion to the members of the Court, and to the Members of the League of Nations, through the Secretary-General of the League, and to the States mentioned in the Annex to the Covenant.

"Notice of such request shall also be given to any international organizations which are likely to be able to furnish information on the question."[6]

The Registrar in every case sends to the Secretary-General an appropriate number of certified copies of the resolution and request for transmission to the Members of the League, and notifies the States which not being Mem-

[1] See instances in Chapter V. below.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*

[5] Strictly there are, of course, no "parties" in advisory cases, but in substance States do frequently occupy the position of a party. See p. 124 *infra*.

[6] See p. 280 *infra*.

bers are mentioned in the Annex to the Covenant by sending them copies of the same documents direct. It has also been the practice of the Court to give the like notice to States which are neither Members of the League nor mentioned in the Annex to the Covenant, when they seem to be concerned in the matter referred to the Court.[1] In one case, that of the *German Settlers in Poland*, the power of the Court to take this course was questioned, on behalf of the Polish Government, in regard to the notification given to Germany.[2] The Court, however, stated that the enumeration contained in Article 73 above is not restrictive: it indicates the communications which the Registrar is bound on his own responsibility to make, but does not exclude the power of the Court itself to decide that analogous communications shall be made to States outside the enumeration which are capable of furnishing useful information.[3]

The reference in the above Article to "international organizations" is directed to cases of a special or technical character. The only instances in which it has so far been found necessary to give notice to organizations as distinct from States were cases relating to Labour questions.[4]

It will be observed that there is no express provision in the above Articles for the presentation of oral information, still less arguments, in advisory cases. In form, there are no "parties" in such cases, but under Article 14 of the Covenant[5] there can be, and there have in fact been, referred to the Court for advisory opinion disputes between States which, in substance, have possessed all the characteristics of contentious litigation.[6] In these cases full oral argument has been allowed, the procedure adopted being the same as in contentious cases, viz. an opening

[1] See pp. 131, 137, 159, 181, 192 *infra*.

[2] See *Publications of the Court*, Series C, No. 3, vol. iii. tome ii. pp. 1051-1052.

[3] See *ibid.* p. 1055.

[4] See pp. 130-131, 137 *infra*.

[5] See p. 232 *infra*, and pp. 67-71 *supra*.

[6] See pp. 144-156, 175-202, 213-216 *infra*.

speech on each side followed by a reply and a rejoinder.[1] When the contentious character has been absent it has been the practice for a single speech to be made by each State (or international organization) that desired to be heard.[2]

Article 74 of the Rules of Court provides that advisory opinions shall be printed and published in a special collection for which the Registrar is responsible.[3]

Errors.—Article 75 of the Rules of Court provides that the Court, or the President if the Court is not sitting, shall be entitled to correct an error in any order, judgment, or opinion, arising from a slip or accidental omission.[4]

[1] See pp. 149-150, 181-182, 193 *infra*.

[2] See pp. 131-132, 137-138 *infra*.

[3] See p. 280 *infra*. This collection is Series B of the *Publications of the Court*. As in contentious cases the speeches and documents relating to advisory opinions are published in Series C. See footnote 6, p. 117 *supra*.

[4] See p. 280 *infra*.

V

WORK OF THE COURT

It is proposed in this chapter to give an account of the judicial activities of the Court from its inception to the present time.

The Court has held five judicial sessions (three ordinary and two extraordinary[1]), varying in length from one to three months, between June 15, 1922, and September 12, 1924, in the course of which it has been called upon to deal with twelve cases. Of these, nine were disputes or questions referred to it by the Council of the League of Nations for advisory opinion,[2] and three were contentious cases properly so called.[3] The aim of the present chapter is to give, in chronological order, a brief exposition of the subject-matter and decision of each of these cases, and also, where it is possible having regard to the available information, an indication of the action taken by the bodies and States concerned in consequence of the Court's ruling.

Advisory Opinion with regard to the Designation of the Dutch Workers' Delegate to the Third Session of the International Labour Conference.

This case arose out of the nomination by the Netherlands Government of the workers' delegate to the above-mentioned session of the International Labour Conference. The Treaty of Versailles sets up a permanent international labour organization consisting of two branches: the General Conference of Representatives of the Members of

[1] See pp. 39-40 *supra*, and footnote 3 below.

[2] See pp. 67-71, 121-125 *supra*.

[3] Since going to press a third extraordinary Session has been held, commencing on Jan. 12, 1925, at which two further cases have been heard: the one relating to the exchange of Greek and Turkish populations and the other to the Mavrommatis Palestine Concessions.

the League of Nations (generally known as the International Labour Conference) and the International Labour Office,[1] for the purpose of promoting the objects set forth in the preamble to Part XIII of the Treaty,[2] which may be broadly described as the improvement of world labour conditions. Article 389 of the Treaty provides *(inter alia)* as follows:

Para. 1.—"The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the work-people of each of the Members."

Para. 2.—"Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. . . ."

Para. 3.—"The Members undertake to nominate non-Government Delegates and advisers *chosen in agreement with the industrial organisations*, if such organisations exist, *which are most representative of employers or work-people, as the case may be, in their respective countries.*" [3]

Paragraphs 4, 5 and 6 are not material.

Para. 7.—"The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article."

The non-Government delegate representing the work-people of the Netherlands at the third session of the Conference which met at Geneva on October 25, 1921, was appointed by the Dutch Government in the following circumstances:[4]

The Minister of Labour of the Netherlands, with the object of bringing about the agreement prescribed in Article 389, para. 3, set out above, invited the five follow-

[1] See Treaty of Versailles, Art. 388. [2] See Art. 387.

[3] The words here italicized are those upon which the question before the Court primarily turned.

[4] The statement of facts here given is taken from the opinion of the Court. See *Publications of the Court*, Series B, No. 1, pp. 11-16.

ing Netherlands Labour Organizations, which he regarded as the most important, to take part in a consultation with regard to the nomination of the workers' delegate:

(1) The Netherlands Confederation of Trades Unions, numbering 218,596 members;
(2) The Confederation of Catholic Trades Unions, numbering 155,642 members;
(3) The Confederation of Christian Trades Unions numbering 75,618 members;
(4) The Netherlands General Confederation of Trades Unions, numbering 51,195 members;
(5) The National Labour Secretariat, numbering 36,038 members.

The last of these five organizations refused to take part in the consultation. The second, third, and fourth agreed, among themselves to propose a candidate for nomination, while the Netherlands Confederation of Trades Unions considered that it was itself entitled to propose the workers' delegate.

The Netherlands workers' delegate to the first and second sessions of the Labour Conference had been nominated from the Netherlands Confederation of Trades Unions, either without opposition on the part of the other organizations, or with their express consent. The latter organizations were on those occasions represented by technical advisers. The Minister, however, when nominating the delegate for the second session of the Conference, expressed the intention of selecting a member of one of the other organizations as delegate on the next occasion, whilst at the same time assuring the Netherlands Confederation that it would be represented by an adviser.

The Minister accordingly proposed, in 1921, to choose one of the technical advisers to the third session of the Conference from amongst the members of the Netherlands Confederation of Trades Unions, whilst appointing a candidate proposed by the other organizations as workers' delegate. The Netherlands Confederation, however, would not fall in with this arrangement.

Thereupon the Queen of the Netherlands, by a Royal Decree, dated October 4, 1921, appointed as workers' delegate the common nominee of the three organizations mentioned under (2), (3), and (4) above.

On October 22, 1921, the Netherlands Confederation of Trades Unions sent a letter to the International Labour Office protesting against this nomination. The Confederation maintained that the nomination constituted a violation of Article 389 of the Treaty of Versailles because the selected candidate was not selected in agreement with the Netherlands Confederation, which, *taken singly*, *had the largest number of members*, and was, on this account, the *most representative organization* within the meaning of the Article. The International Labour Conference, however, admitted the workers' delegate appointed by the Netherlands Government on the understanding that his admission should not be treated as a precedent. At the same time it adopted a resolution inviting the Governing Body of the International Labour Office to request the Council of the League to obtain from the Court an opinion as to the interpretation of Article 389 of the Treaty of Versailles and as to the rules which should be observed by the Members of the International Labour Organization in order to comply with the terms of this Article in appointing non-Government delegates and advisers to the sessions of the General Conference.

In pursuance of this resolution, and under instructions from the Governing Body, the Director of the International Labour Office, by letter dated March 17, 1922,[1] requested the Council to obtain from the Court an opinion upon the question whether the workers' delegate for the Netherlands was nominated in accordance with the provisions of paragraph 3 of Article 389 of the Treaty.

This request was favourably received by the Council, who, on May 12, 1922, adopted the following resolution:

"The Council of the League of Nations, having considered the letter of March 17, 1922, from the Director of the International Labour Office to the Secretary-General, by which the

[1] See *Publications of the Court*, Series C, No. 1, pp. 345-347.

Council is informed of the unanimous desire of the Third International Labour Conference and of the Governing Body of the International Labour Office that the Council will request the opinion of the Permanent Court of International Justice upon the question formulated in the letter.

" Resolves :

" 1. The Council requests the Permanent Court of International Justice, in conformity with Article 14 of the Covenant of the League of Nations, to give an advisory opinion upon the question 'whether the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference was nominated in accordance with the provisions of Paragraph 3 of Article 389 of the Treaty of Versailles.'

" 2. The Secretary-General is authorised to present this request to the Court, together with the letter from the Director of the International Labour Office and the documents concerning the matter, to give all necessary assistance in the examination of the question and to arrange to be represented before the Court if necessary.[1]

" 3. The International Labour Office is requested to afford the Court all assistance which it may require in the consideration of the question hereby submitted."

This resolution was transmitted to the Court by a letter from the Secretary-General of the League, dated May 22, 1922, containing the formal request for opinion.[2]

In conformity with Article 73 of the Rules of Court,[3] notice of the request[4] was given by the Registrar to the Members of the League through the Secretary-General, to the States mentioned in the Annex to the Covenant and to the following organizations:

The International Association for the Legal Protection of Workers;

[1] The authorization by the Council to the Secretary-General to be represented before the Court if necessary, is a customary feature of the various resolutions submitting questions to the Court. As already mentioned (p. 123), it must not be taken as in any way denoting that the League or its Secretariat are " parties " before the Court. There are, properly speaking, no " parties " in advisory cases, but although States may, under the advisory form, be substantially in the position of " parties," the function of the League and its Secretariat would be strictly limited to giving information. In fact, the faculty of being represented has never, so far, been acted upon.

[2] See *Publications of the Court*, Series B, No. 1, p. 5.

[3] Set out at p. 280 *infra*, and see pp. 123-124 *supra*.

[4] For this notice see *Publications of the Court*, Series C, No. 1, p. 420.

The International Federation of Christian Trades Unions; and

The International Federation of Trades Unions.

The request was also communicated to Germany and Hungary.[1]

The Court[2] held its first public sitting on June 15, 1922, at the Peace Palace, The Hague, this occasion marking the commencement of its judicial work, and being the opening of the first ordinary session provided for by Article 23 of the Statute.[3]

The President announced that the Court had decided to hear at public sittings the representatives of any State or organization which, before June 23, expressed its desire to be heard,[4] that after the hearings the Court would consider the question in private, and that the opinion formed by the Court would be read in open Court.[5] It is of interest to record that the Attorney-General (the Right Hon. Sir Ernest M. Pollock, K.C., M.P.) was present at this sitting on behalf of the British Government, and delivered a speech expressing his confidence in and good wishes for the future of the Court.[6]

The hearing of the case occupied five sittings,[7] in the course of which oral statements were made in the following order on behalf of (1) the British Government,[8] (2) the

[1] Neither of which was then a Member of the League, though Hungary has since become a Member. See as to such communications, p. 124 *supra*.

[2] The Bench was constituted as follows: M. Loder, President; M. Weiss, Vice-President; Lord Finlay, MM. Nyholm, Moore, de Bustamente, Altamira, Oda, Anzilotti, Judges; MM. Beichmann and Negulesco, Deputy-Judges.

[3] See *Publications of the Court*, Series C, p. 2.

[4] This decision was immediately brought to the knowledge of those concerned; see *Publications of the Court*, Series C, No. 1, p. 440, and Series B, No. 1, p. 11.

[5] See *ibid.* Series C, No. 1, p. 5.

[6] See *Ibid.* Series C, No. 1, pp. 5, 42-43.

[7] On June, 22, 24, 26, 29 and 30, 1922. See *ibid.* pp. 7-18.

[8] The only interest of the British Government in the case was in regard to the interpretation of Art. 389 of the Treaty of Versailles. They supported the view adopted by the Court in its opinion. The British Government were represented by the Attorney-General, Mr. G. J. Talbot, K.C., Mr. C. W. Lilley, and the Author, with the Hon. Clive Lawrence, Solicitor to the Ministry of Labour.

Netherlands Government, (3) the International Federation of Trades Unions, (4) the International Federation of Christian Trades Unions, and (5) the International Labour Office.[1] In addition, the Court had before it[2] the documentary information supplied by the International Labour Office through the League of Nations, containing details of all the relevant facts, as well as legal arguments,[2] a memorandum from the Netherlands Government,[3] a memorandum from the Netherlands General Confederation of Trades Unions,[4] and a telegram from the Swedish Government.[5]

The Opinion of the Court, which was unanimous,[6] was delivered on July 31, 1922.[7] The Opinion states that since the Netherlands workers' delegate to the third session of the International Labour Conference was admitted by the Conference, the sole object of the question submitted to the Court was to obtain an interpretation of Article 389, paragraph 3, of the Treaty of Versailles. In other words, although according to the form of the question submitted by the Council of the League, the method of procedure adopted by the Government of the Netherlands for the nomination of the Delegate was the issue raised, it is recognised that this was only in order to fix clearly the state of facts to which the interpretation was to apply.[8]

The Court holds that the engagement contained in the above-mentioned provision[9] is not a mere moral obliga-

[1] Verbatim Reports will be found in *Publications of the Court*, Series C, No. 1, pp. 44-102, 123-152.

[2] See Opinion, *Publications of the Court*, Series B, No. 1, p. 11.

[3] See *Publications of the Court*, Series C, No. 1, pp. 345-418.

[4] *Ibid.* pp. 443-444.

[5] *Ibid.* p. 447.

[6] For the constitution of the Bench, see footnote 2, p. 131 *supra*.

[7] See *Publications of the Court*, Series B, No. 1.

[8] *Ibid.* p. 17. It is to be observed that the Netherlands Government had not been consulted by the Council of the League as to the reference of the question to the Court (see that Government's Memorandum mentioned above), and it was therefore important to emphasize that the question was not directed to an act of that Government.

[9] Art. 389, para. 3, is set out on p. 127 *supra*.

tion; it is a part of the Treaty and constitutes an obligation by which the parties to the Treaty are bound.[1] The obligation is that the persons nominated should have been chosen in agreement with the organizations most representative of employers or workpeople, as the case may be. The question: What organizations are the most representative? is a question to be decided in the particular case, having regard to the circumstances in each particular country at the time when the choice falls to be made.[2] Numbers are not the only test of representative character, but they are an important factor; other things being equal, the most numerous organizations will be the most representative. The Article throws upon the Government the duty of deciding on the data at its disposal what organizations are, in point of fact, the most representative.[3] The Government's decision may, however, be reviewed under the seventh paragraph of the Article,[4] and the Conference has power, by a two-thirds majority, to refuse to admit any delegate whom it deems not to have been nominated in accordance with the Article. Such a refusal to admit may be based on any grounds, either of fact or law, which satisfy the Conference that the Article has not been complied with.[5]

In regard to the circumstances prevailing in the Netherlands at the time of the nomination of the workers' delegate, the Court expressed the view that the agreement contemplated in Article 389, paragraph 3,[6] is not necessarily one between the Government and a *single* organization, the most important amongst those representative of the class in point. The plural "organizations" is disjunctive, and applies both to employers' and workpeople's organizations.[7] If in a particular country there exist

[1] *Publications of the Court*, Series B, No. 1, p. 19.
[2] *Ibid.* p. 19.
[3] *Ibid.* pp. 19, 21.
[4] Set out on p. 127 *supra*.
[5] *Publications of the Court*, Series B, No. 1, p. 21.
[6] Set out on p. 127 *supra*.
[7] *Publications of the Court*, Series B, No. 1, pp. 21, 23.

several industrial organizations representing the working classes, the Government must take all of them into consideration when it is proceeding to the nomination of the workers' delegate and his technical advisers.[1]

Finally, the Court dealt with a contention advanced by the Netherlands Confederation of Trades Unions that, even admitting that the text of paragraph 3 purports to include several workers' and employers' organizations, the delegate was not nominated in accordance with its provisions because an agreement with three organizations which do not include the most numerous organization is not an agreement with *the* most representative organizations. The Court rejected this interpretation of the paragraph on the ground that it was too narrow and would lead to the unreasonable result that one single organization would be enabled to prevent an agreement being reached, notwithstanding that the great majority of workers who might be represented by a number of distinct organizations gave their adhesion to the nomination of a particular candidate.[2] The aim of each Government must be an agreement with all the most representative organizations, but that is only an ideal extremely difficult to attain and which cannot, therefore, be considered as the normal case contemplated in paragraph 3 of Article 389.[3]

For these reasons the Court was of opinion that the Netherlands delegate was nominated in accordance with the provisions of paragraph 3, and, therefore, answered the question referred to it in the affirmative.[4]

Two Advisory Opinions as to the Position of the International Labour Organization in regard to Agriculture.

These cases are taken together because of the close connection between them.

A. The first case relates to the competence (or jurisdiction) of the International Labour Organization, set up

[1] *Publications of the Court*, Series B, No. 1, p. 23.

[2] *Ibid.* p. 25.

[3] *Ibid.* p. 25.

[4] *Ibid.* p. 27. For the action taken upon this Opinion, see pp. 143-144 *infra*.

by the Treaty of Versailles and already mentioned in connection with the previous case,[1] to deal with the conditions of labour of agricultural workers, and arose out of the following circumstances:[2]

The International Labour Conference, at its first session at Washington, in October and November, 1919, decided to place questions relating to agricultural labour on the agenda of a future Conference. The second session, at Genoa, in June and July, 1920, dealt with other subjects, but in March, 1920, the Governing Body of the International Labour Office, which, under Article 400 of the Treaty of Versailles, settles the Agenda of the Conference, included in the Agenda of the third session, which was to be held in 1921, certain questions relating to the conditions of agricultural labour. In January, 1921, the Swiss Government took exception to the inclusion of these questions, but after correspondence with the International Labour Office did not pursue the matter. Subsequently, however, the French Government, in communications addressed to the same Office, requested that agricultural questions should be withdrawn from the Agenda on the ground, not only that discussion of the subject would be inopportune, but also that the competence of the International Labour Organization in regard to such questions was open to doubt. The request was not complied with, and the Agenda of the third session of the Conference, which was held at Geneva in October, 1921, contained the following items:

"(2) Adaptation to agricultural labour of the Washington decisions concerning the regulation of the hours of work.

"(3) Adaptation to agricultural labour of the Washington decisions concerning:

(*a*) Measures for the prevention of, or providing against, unemployment;

(*b*) Protection of women and children.

[1] See pp. 126-127 *supra*.

[2] The statement of facts in the text is based upon that contained in the Opinion of the Court. See *Publications of the Court*, Series B, Nos. 2 and 3, pp. 13-21.

"(4) Special measures for the protection of agricultural workers :
(*a*) Technical agricultural education ;
(*b*) Living-in conditions of agricultural workers ;
(*c*) Guarantee of the rights of association and combination ;
(*d*) Protection against accident, sickness, invalidity and old-age."

At the meeting of the Conference on October 27, 1921, a resolution was adopted by 74 votes to 20, reaffirming the competence of the Conference in matters of agricultural labour, and deciding to consider separately whether it was opportune to maintain on the Agenda each of the above questions.

At the meeting on October 28 question (2) was removed from the Agenda, the vote for its retention standing 63 to 39, or less than the requisite two-thirds majority.[1] On the following day, however, it was decided by a vote of 90 to 17 to retain question (3) and by a vote of 93 to 13 to retain question (4). The Conference later adopted various draft conventions and recommendations[2] concerning the protection of agricultural workers.

The French Government, however, maintained the standpoint alluded to above, and, with a view to obtaining an authoritative opinion, the representative of France at the meeting of the Council of the League on January 13, 1922, presented a resolution to the effect that the Court be requested to give an advisory opinion on the question of the competence of the International Labour Organization to deal with questions of agricultural labour, and also as to the extent of its powers in this matter. The Council decided to postpone action in order that further information might be obtained and further consideration given, and on May 12, 1922, it adopted the Resolution by virtue of which the present case was brought before the Court.

This Resolution requests the Court to give the Council an advisory opinion upon the following question :

"Does the competence of the International Labour Organiza-

[1] See Treaty of Versailles, Art. 402.

[2] See *ibid.* Art. 405.

tion extend to international regulation of the conditions of labour of persons employed in agriculture ? " [1]

The request was transmitted to the Court by the Secretary-General of the League on May 22, 1922,[2] together with a memorandum prepared by the International Labour Office.[3]

The request was communicated on behalf of the Court to the same States as the first request dealt with above,[4] and to the following international organizations:

The International Federation of Agricultural Trades Unions;

The International League of Agricultural Associations;

The International Agricultural Commission;

The International Federation of Christian Unions of Land-Workers;

The International Federation of Land-Workers;

The International Institute of Agriculture at Rome.[5]

The announcement made by the President as to hearing representatives of States and organizations desiring to be heard, mentioned in connection with the first case, applied to this one also.[6]

Five public sittings were held at the Peace Palace, beginning on July 3, 1922, and ending on July 10, in the course of which oral statements were made to the Court in the following order on behalf of (1) the French Government; (2) the British Government; (3) the Portuguese Government; (4) the Hungarian Government; (5) the International Agricultural Commission; (6) the Inter-

[1] See *Publications of the Court*, Series B., Nos. 2 and 3, p. 7. The Resolutions contains the usual authorization to the Secretary-General to give all necessary assistance to the Court, etc., and also requests the International Labour Office to afford all the assistance which the Court may require in the consideration of the question. See p. 130 *supra*.

[2] See *Publications of the Court*, Series B, Nos. 2 and 3, p. 5.

[3] This memorandum is set out in *Publications of the Court*, Series C, No. 1, pp. 463-476.

[4] See pp. 130, 131 *supra*, and *Publications of the Court*, Series C, No. 1, p. 477.

[5] See *Publications of the Court*, Series C, No. 1, pp. 4 and 478; and Rules of Court, Art. 73, p. 280 *infra*.

[6] See p. 131 *supra*, and *Publications of the Court*, Series C, No. 1, p. 5.

national Labour Office; (7) the International Federation of Trades Unions.[1] In addition, the Court had at its disposal a considerable body of documentary information supplied by Governments and organizations interested in the question.[2]

The Opinion of the Court was delivered on August 12, 1922,[3] M. Weiss, Vice-President, and M. Negulesco, deputy-judge, dissenting without stating their reasons.[4]

The Court made it plain that the question before it related simply to the *competency* of the International Labour Organization in regard to agricultural labour; no point arose as to the expediency or opportuneness of the application to agriculture of any particular measure.[5] The question, therefore, depended entirely upon the interpretation of the Labour Clauses of the Treaty of Versailles, and the Court stated that the true meaning was not to be determined merely upon particular phrases, which, if detached from the context, may be interpreted in more than one sense, but that the Treaty must be read as a whole.[6] The Opinion contains another observation of general importance in the following passage:

> " It was much urged in argument that the establishment of the International Labour Organization involved an abandonment of rights derived from national sovereignty, and that the competence of the Organization, therefore, should not be extended by interpretation. There may be some force in this argument, but the question in every case must resolve itself into what the terms of the Treaty actually mean, and it is from this point of view that the Court proposes to examine the question." [7]

The Court then examines the provisions of Part XIII (Labour) of the Treaty, and finds that its terms are so comprehensive as to negative the conclusion that it was the intention of the High Contracting Parties to exclude

[1] See *Publications of the Court*, Series C, No. 1, pp. 19-27.

[2] See *Publications of the Court*, Series B, Nos. 2 and 3, pp. 11-12 ; Series C, No. 1, part iii. section B, pp. 462-535.

[3] See *Publications of the Court*, Series B, Nos. 2 and 3, p. 43. For composition of the Court, see p. 131 *supra*, footnote 2.

[4] See *Publications of the Court*, Series B, Nos. 2 and 3, p. 43.

[5] *Ibid.* p. 21. [6] *Ibid.* p. 23. [7] *Ibid.* p. 23.

agriculture, the most ancient and the greatest industry in the world, in which more than half of the world's wage-earners are employed, from the scope of the International Labour Organization.[1]

The Opinion proceeds to deal with the argument that Part XIII could not have been intended to comprehend agricultural labour, because certain of the general principles enunciated in Article 427 are inapplicable to it. That Article specifies nine "methods and principles" the application of which the High Contracting Parties recognize as of special and urgent importance. It was not disputed that most of these principles are as applicable to agriculture as to any other form of labour, but objection was taken to the fourth, eight-hour day; the fifth, weekly rest of 24 hours; the sixth, abolition of child labour and limitation of that of young persons; and the ninth, inspection.[2] The Court pointed out that some of these principles had, in fact, been applied to agricultural labour, whilst others were equally difficult of application to other branches of labour, such as navigation and fisheries, which were admittedly within the purview of the International Labour Organization.[3] But it was sufficient for the present question to say that this difficulty is fully recognized in the Treaty, inasmuch as there is nothing in Article 427 that enjoins the application of all the principles in their entirety by any particular nation, or at any particular time, or to any particular kind of labour. On the contrary, their enunciation is introduced with the explicit declaration that the High Contracting parties "recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment," etc.[4] Moreover, the opening words of Article 427 state that the "permanent machinery" provided in Part XIII is concerned with the "well-being, physical, moral, and intellectual," of "industrial wage-earners"—in the French text, "tra-

[1] See *Publications of the Court*, Series B, Nos. 2 and 3, pp. 21-27, and particularly pp. 23-24.

[2] *Ibid.* pp. 29-31. [3] *Ibid.* pp. 31, 41. [4] *Ibid.* p. 31.

vailleurs salariés." Here there is no limitation or qualification, and none was to be expected in view of the fact that Part XIII at the very outset broadly declares that the concern of the organization is the amelioration of "conditions of labour."

The Court then passes to consider what was the principal basis of the contention that agriculture was excluded, viz. the use in the French text of certain clauses of the words *industrie* and *industrielle*. It was strenuously argued that these terms ordinarily bear a meaning restricted to manufacture and that their use involved the consequence that Part XIII as a whole must be confined within that limit.[1] The Court referred to standard dictionaries, from which it appeared that both in French and English the words in question comprehended the industry of agriculture, although there could be no doubt that, at least in French, they were generally used in a special and restrictive sense. It was held, however, that the true construction must be arrived at by considering the Treaty as a whole, the context being the final test.[2]

After a careful examination of all the relevant provisions, the Court was unable to find in Part XIII any real ambiguity, and had no doubt that agricultural labour was included in it.[3] The Opinion adds that if there were any ambiguity the Court might, for the purpose of arriving at the true meaning, consider the action which had been taken under the Treaty, and in this connection points out (1) that whereas agriculture had been repeatedly discussed since the date of the signature of the Treaty in June, 1919, it was not until October, 1921, that any of the Contracting Parties raised the question of the competence of the International Labour Organization to deal with it, and (2) that whilst every argument used for the exclusion of agriculture might, with equal force, be used for the exclusion of navigation and fisheries, these forms of industry

[1] See *Publications of the Court*, Series B, Nos. 2 and 3, p. 33.

[2] See *ibid.* pp. 33-35.

[3] See *ibid.* pp. 35-39.

were dealt with by the International Labour Conference without protest.[1]

Finally, it should be observed that the Court declined to decide or discuss the important question of the admissibility of the preparatory work of the commission which drafted Part XIII of the Treaty as evidence of the meaning of the final text, on the ground that it was unnecessary to do so in the present case.[2]

In the result the Court held that the competence of the International Labour Organization does extend to international regulation of the conditions of labour of persons employed in agriculture, and therefore answered in the affirmative the question referred to it.[3]

B. The second of the two cases mentioned above was referred to the Court for advisory opinion by virtue of a "decision" taken by the Council of the League on July 18, 1922, and communicated to the Court by the Secretary-General on the same day.[4] The question submitted was the following:

"Does examination of proposals for the organization and development of methods of agricultural production and of other questions of a like character, fall within the competence of the International Labour Organization?"[4]

The Minutes of the Council[5] show that it was the French Government that moved the Council to refer this question, which was regarded as supplementary to the question in regard to agricultural labour then pending before the Court.

Notice of the request for advisory opinion was immediately given by the Court to the same States as in the two previous cases and to the International Institute of

[1] See *Publications of the Court*, Series B, Nos. 2 and 3, pp. 39-41.

[2] *Ibid.* p. 41. An interesting memorandum in support of the inadmissibility of this evidence submitted to the Court by the French Government is reproduced in the *Publications of the Court*, Series C, No. 1, pp. 187-190.

[3] See *Publications of the Court*, Series B, Nos. 2 and 3, p. 43. For the action taken on this opinion, see pp. 143-144 *infra*.

[4] See *Publications of the Court*, Series B, Nos. 2 and 3, pp. 45-47.

[5] *Ibid.* Series C, No. 1, pp. 594-596.

Agriculture at Rome.[1] Oral statements were addressed to the Court on behalf of the French Government on August 3, 1922,[2] and on behalf of the International Labour Organization on August 8, 1922,[3] in addition to which the Court was in possession of written information submitted by various States and international organizations interested in the question.[4]

The unanimous Opinion of the Court was delivered on August 12, 1922, at the same sitting as the Opinion in the preceding case. The Court referred at the outset to the fact that the International Labour Organization disclaimed any right or intention of intervening in matters of agricultural production, and pointed out that the French Government, notwithstanding this disclaimer, had raised the question for the purpose of obtaining an authoritative opinion by the Court.[5] The Opinion then states that the present question, like the preceding one, depends entirely upon the construction of the Treaty provisions, viz. Part XIII of the Treaty of Versailles, but whilst the two questions both have reference to agriculture, they are essentially different in their nature: the one refers to labour, the other to production. The Court finds that whereas the former subject comes within the scope of the International Labour Organization, being, indeed, the very thing which it was created to deal with, the functions of the Organization do not extend to the promotion of improvements in processes of production, either in agriculture or any other branch of industry.[6] The organization and development of the means of production are not committed to the Organization. It may be that in some cases the improvement of the conditions of the workers may increase the amount of the production, and the International Labour Organization is not bound totally to exclude from its consideration the effect upon production of measures which it may seek to

[1] See *Publications of the Court*, Series C, No. 1, pp. 586-587; and Series B, Nos. 2 and 3, p. 51.

[2] See *Publications of the Court*, Series C, No. 1, p. 29.

[3] *Ibid.* p. 30.

[4] *Ibid.* Series B, Nos. 2 and 3, p. 51.

[5] *Ibid.* pp. 51, 53.

[6] *Ibid.* p. 55.

promote for the benefit of the workers. If it should appear that a particular measure would involve a material diminution of production, this might be a matter proper to be considered by the Organization before deciding on its adoption, but the consideration of methods of organizing and developing production from the economic point of view is in itself alien to the sphere of activity marked out for the International Labour Organization by Part XIII of the Treaty, and, broadly speaking, any effect which the performance by the Organization of its functions may have on production is only incidental. On the other hand, it is evident that the Organization cannot be excluded from dealing with matters specifically committed to it by the Treaty on the ground that this may involve in some aspects the consideration of the means or methods of production, or the effect of proposed measures upon production.[1]

It will be noticed that the question referred to the Court mentions "other questions of a like character" after the words "organization and development of methods of agricultural production."[2] These "other questions" not being specified, the Court expressly refrains from expressing an opinion in regard to them.[3]

The Opinion concludes by stating that the Court understands the question to be whether the consideration of the means of production in itself, and apart from specific points in respect of which powers are conferred upon the International Labour Organization by the Treaty, falls within the competence of the Organization, and this question for the reasons given it answers in the negative.

This Opinion concluded the work of the Court at its first ordinary session.

The Advisory Opinions in each of the three cases dealt with above came up for consideration at a public meeting of the Council of the League of Nations held at Geneva

[1] See *Publications of the Court*, Series B, No. 1, pp. 57, 59.

[2] See p. 141 *supra*.

[3] See *Publications of the Court*, Series B, No. 1, p. 59.

on September 1, 1922,[1] when the Council directed the Secretary-General to transmit the Court's Opinions to the Director of the International Labour Office for communication to the competent authorities of the Labour Organization.[1] The Director was also to be asked to communicate the Opinions to States which are Members of the Labour Organization but not of the League, it being noted that the Members of the League had already received copies. The action thus taken by the Council enabled the ruling of the Court to be available for the future guidance of the States and bodies concerned.

Advisory Opinion relating to the Tunis and Morocco Nationality Decrees.

This was an important case, dealt with at an extraordinary session of the Court,[2] specially summoned for the purpose in January, 1922. The matter arose as follows:[3]

On November 8, 1921, two Decrees were issued in the French Protectorate of Tunis, one by the Bey (the local sovereign), the other by the President of the French Republic, whereby French nationality was imposed upon all persons born in Tunis of parents, justiciable by the French Courts, also born there; and Tunisian nationality upon all persons so born whose parents were not so justiciable. The effect of these Decrees, so far as material, was to attach French nationality and its consequential obligations, including military service, to a considerable number of British subjects (principally of Maltese origin) established in the country, inasmuch as, in common with other Europeans, they and their parents were subject to the jurisdiction of the French Courts.

On the same date, substantially similar Decrees were issued in the French Zone of Morocco by the Sultan and the President of the French Republic respectively, but in

[1] See *League of Nations Official Journal*, 3rd year, No. 11 (part ii.), p. 1173, Minute 746.

[2] See Statute, Art. 23, p. 245 *infra*, and pp. 39, 40 *supra*.

[3] The statement of facts in the text is based upon the pleadings and annexed documents. See *Publications of the Court*, Series C, No. 2, supp. vol.

this instance the legislation was not, for various reasons, immediately applicable to British subjects.

In pursuance of the Tunis Decrees, British subjects were called up for service in the French Army, and a certain number of them, having resisted, were subjected to imprisonment. The British Government protested to the French Government, and a lengthy correspondence ensued between the Foreign Offices of the two countries, in the course of which signs of rising temper were not absent. The correspondence contained a considerable body of legal arguments, whereby the two parties sought to justify their respective standpoints. The question at issue was, in substance, this: Was it in accordance with international law for France to impose her nationality upon British subjects in Tunis and Morocco, being territories not under her sovereignty but under her protection? In order to decide this question it was necessary to consider, besides general principles of international law, the interpretation and effect of a number of treaties between (*a*) the Protected States and Great Britain, (*b*) the Protected States and France, (*c*) Great Britain and France, and (*d*) France and other Powers, under which Great Britain claimed most-favoured-nation privileges.

The French contention, advanced in the correspondence, was that her rights in the Protectorates were such that it was not only permissible for her, in conjunction with the local sovereign, to enact the legislation in question, but that this action was entirely a domestic matter in which Great Britain was, by international law, not entitled to interfere. Great Britain, on the other hand, maintained that the relevant treaties gave her rights which the Decrees infringed, and disputed the French view of the law.

When it became manifest that no agreement was possible, the British Government proposed that the dispute, being of a legal nature, and therefore suitable for submission to arbitration, should be referred to the Permanent Court of International Justice, under Article 13 of the Covenant,[1] or to the Permanent Court of Arbitration

[1] Set out at p. 232 *infra*.

under the Arbitration Convention between France and Great Britain of October 14, 1903.[1]

The French Government refused both alternatives; as to the Convention of 1903 on the grounds (*a*) that the interests of a third party, Tunis, were concerned, and (*b*) that questions of nationality were too intimately bound up with the very constitution of the State to be regarded as exclusively of a legal nature; and as to Article 13 of the Covenant, on the ground that its provisions, being limited and optional, the question did not as of right fall within the jurisdiction of the Permanent Court of International Justice.

In view of the French Government's refusal to refer the dispute to arbitration, the British Government declared its intention of bringing the matter before the Council of the League of Nations under Article 15 of the Covenant.[2] The French Government objected to this course also, but in the face of Great Britain's determination to avail herself of the right conferred by the Article to effect the submission by a unilateral act,[3] announced that she would rely upon the eighth paragraph of Article 15, which provides that "if the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a *matter which by international law is solely within the domestic jurisdiction of that party*, the Council shall so report, and shall make no recommendation as to its settlement."

The British Government, in August, 1922, notified the Secretary-General of the League of the existence of the dispute,[4] and placed the matter on the Council's agenda for

[1] Article 1 of this Convention provides that "differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of July 29, 1899, provided, nevertheless, that they do not affect the vital interests, the independence or the honour of the two contracting States, and do not concern the interests of third parties."

[2] Set out at pp. 232-233 *infra*.

[3] See Art. 15, para. 1, pp. 232-233 *infra*.

[4] See Covenant, Art. 15, para. 1, *ibid*.

its forthcoming meeting.[1] Conversations ensued between Lord Balfour and M. Léon Bourgeois, which resulted in an agreement between the parties to propose to the Council the adoption of a resolution referring to the Court the preliminary question whether Article 15, paragraph 8, applied to the dispute, and making certain further arrangements. The Council readily fell in with this proposal, and on October 2, 1922,[2] adopted the agreed resolution, which, together with the introductory recital, was in these terms:

"The Council has examined the proposals made by Lord Balfour and M. Léon Bourgeois on the subject of the following question, placed on its Agenda of August 11, at the request of the Government of His Britannic Majesty:

"'Dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco (French Zone) on November 8, 1921, and their application to British subjects, the French Government having refused to submit the legal questions involved to arbitration':

"The Council, noting that friendly conversations have taken place between the representatives of the two Governments and that they have agreed on the proposals to be made to the Council:

"Expresses its entire adhesion to the principles contained in these proposals, and has adopted the following resolutions:

"(*a*) The Council decides to refer to the Permanent Court of International Justice, for its opinion, the question whether the dispute referred to above is or is not by international law solely a matter of domestic jurisdiction (Article 15, paragraph 8, of the Covenant);

"(*b*) And it requests the two Governments to bring this matter before the Permanent Court of International Justice, and to arrange with the Court with regard to the date on which the question can be heard and with regard to the procedure to be followed;

"(*c*) Furthermore, the Council takes note that the two Governments have agreed that, if the opinion of the Court upon the above question is that it is not solely a matter of domestic jurisdiction, the whole dispute will be referred to arbitration or to judicial settlement under conditions to be agreed between the Governments;

[1] See *Publications of the Court*, Series C, No. 2, p. 257.

[2] See *League of Nations Official Journal*, 3rd year, No. 11 (part ii.), p. 1206, Minute 793.

"(*d*) The Secretary-General of the League will communicate paragraphs (*a*) and (*b*) to the Court." [1]

The Secretary-General immediately informed the Registrar of the Court of this resolution,[2] and by letter, dated November 6, 1922, transmitted to the Court the formal request for advisory opinion, together with a certified copy of the resolution.[3]

In conformity with Article 73 of the Rules of Court,[4] notice of the request was given to the Members of the League of Nations through the Secretary-General of the League, and to the States mentioned in the Annex to the Covenant.[5] Having regard to the special terms of paragraph (*b*) of the resolution, the President of the Court communicated with the French and British Governments and correspondence passed,[6] as a result of which it was arranged that an extraordinary session of the Court[7] should be held, commencing on January 8, 1923, and, further, by common desire of the two Governments, that the following special procedure should be adopted: each Government to transmit to the Registrar not later than November 25, 1922, thirty printed copies (increased at the President's request to fifty)[8] of a memorandum (or Case) setting out its contentions and containing copies of any documents on which they relied; and not later than December 23, 1922, a similar number of copies of a counter-memorandum (or Counter-Case) containing its observations on the memorandum of the other Government. The two Governments, further, to communicate directly to one another the memoranda and counter-memoranda on the same day as the other copies are handed to the Registrar at The Hague.

[1] See *Publications of the Court*, Series B, No. 4, pp. 7 and 8.

[2] *Ibid.* Series C, No. 2, p. 248.

[3] *Ibid.* pp. 252-254; also reproduced in Series B, No. 4, p. 6.

[4] See p. 280 *infra*.

[5] See *Publications of the Court*, Series B, No. 4, p. 9.

[6] See *ibid.* Series C, No. 2, pp. 261-279.

[7] See Statute, Art. 23, p. 245 *infra*.

[8] See *Publications of the Court*, Series C, No. 2, p. 267. See also Rules of Court, Art. 34, p. 270 *infra*. The purpose of these further copies was for communication to the Council of the League. See p. 149 *infra*.

Finally, each Government to nominate an agent to act for it in all matters relating to the submission of the question to the Court, and oral arguments to be presented by not more than two counsel on either side.[1]

It will be noticed that this agreed procedure follows broadly the lines of the procedure laid down by the Statute and Rules of Court for contested cases.[2] An unimportant divergence is found in the fact that the Cases and Counter-Cases were exchanged by the interested States direct instead of being communicated to the opposing party by the Court.[3] Another and more noteworthy point is that by reason of the form of proceeding being that of an advisory opinion given to the Council of the League at its request, copies of the above documents were communicated to the members of the Council for their information.[4]

The Cases and Counter-Cases were duly delivered. They comprised a full statement of the facts and legal contentions relied upon on either side, together with the relevant treaties and other documents in support. On January 6, 1923, the British Government submitted to the Court fifty copies of certain supplementary documents, consisting of further diplomatic correspondence relating to the recognition of the French Protectorate of Tunis in 1881,[5] requesting at the same time that they should be communicated to the Agent of the French Government.

The public sittings for the hearing of oral arguments began on January 9, 1922, at the Peace Palace.[6] By agreement between the representatives of the two Governments,

[1] See *Publications of the Court*, Series C, No. 2, pp. 265-266.

[2] See Statute, Arts. 42 and 43, and Rules of Court, Arts. 39, 40, pp. 251, 272-273 *infra*, and pp. 101-104 *supra*.

[3] See Statute, Art. 43, para. 4, p. 251 *infra*.

[4] See *Publications of the Court*, Series C, No. 2, pp. 267, 276.

[5] *Ibid.* p. 279. The pleadings are reproduced in full in Series C, No. 2, supp. vol.

[6] The Court was constituted as follows : M. Loder, President ; M. Weiss, Vice-President ; Lord Finlay, MM. Nyholm, Moore, Altamira, Anzilotti, and Huber, Judges ; MM. Beichmann and Negulesco, Deputy-Judges. The British Government were represented by Mr. George Mounsey of the Foreign Office as Agent, and by the Attorney-General (The Right Hon. Sir Douglas M'Garel Hogg, K.C., M.P.), the Right Hon. Sir Ernest M. Pollock, K.C., M.P., and the Author, as Counsel ; the French Government by M. Merillon and M. de Lapradelle as Agents.

the British case was opened first,[1] followed by a statement of the French case, and the President announced that a reply and a rejoinder would be permitted.

The Attorney-General then addressed the Court.[2] His speech was confined to a closely reasoned argument of the preliminary question, which, in the British contention, was alone before the Court, namely: Did paragraph 8 of Article 15 of the Covenant apply to this case? He maintained that the only issue before the Court was whether the imposition by France of French nationality and its consequential obligations upon persons in Tunis and Morocco who were claimed by Great Britain as British subjects was a matter which, by international law, was solely within the domestic jurisdiction of France within the meaning of that provision. The merits of the dispute were not now before the Court—it was not in issue whether the Nationality Decrees were justified or proper. For the purpose of making good his contention that the matter was not one solely of domestic jurisdiction, the Attorney-General, whilst conceding that legislation by a State conferring its nationality upon persons under its sovereignty was in general not open to challenge by other Powers, proceeded to show that in the present instance not only did the rights of France in the two Protectorates arise out of and depend upon treaties between herself and the territorial sovereigns, but the exercise of these rights was conditioned by treaties and other international engagements to which Great Britain was a party. At every point the question whether, on the merits, France was entitled to

[1] It was contended in the British Case that, inasmuch as France was raising the exception to the jurisdiction of the League and the Court, the burden of proof rested on her and she ought to commence the proceedings. In the French Counter-case, this view was disputed and it was contended that since it was the British Government which had originally raised the matter in dispute, that Government must establish that in so doing it had not exceeded the terms of Art. 15 of the Covenant. This question of procedure was, however, settled by common consent, without prejudice to the correctness of the respective points of view. See *Publications of the Court*, Series C, No. 2, p. 22.

[2] The speech is set out verbatim in *Publications of the Court*, Series C, No. 2, pp. 17-51.

take the action complained of depended on treaty obligations and the interpretation of treaty provisions. This, in the British submission, was enough to take the matter out of the exclusive domestic jurisdiction of France, without it being necessary to decide what the true meaning of the material treaties was.

M. de Lapradelle addressed the Court on January 10, 11, and 12.[1] In a brilliant speech, he pressed the view that in order to decide the preliminary question, it was necessary to investigate and decide the merits of the whole dispute. With this purpose in view he examined all the aspects, both legal and political, of the matter and invited the Court to find that France was justified in issuing the Decrees, that the Treaty provisions relied upon by Great Britain did not, on their true construction, confer any rights upon her, and that therefore the legislation complained of was purely of French domestic concern and outside the sphere of action of the League and the Court.

Sir Ernest Pollock replied, and M. Merillon spoke in rejoinder, on January 13.[2] At the conclusion of the arguments both sides, in accordance with the Continental practice, read out and handed in to the Court a document containing their final conclusions.[3]

The Opinion of the Court was delivered on February 7, 1923. It was unanimous and answered the question in the negative.[4] The Court states that the question before it is, whether the dispute mentioned in the Council's resolution relates to a matter which, by international law, is solely within the domestic jurisdiction of France, and adds that

" under the terms of sub-section (*a*) of the Council's resolution,[5] the Court in replying to the question stated above has to give an

[1] The speech is set out verbatim in *Publications of the Court*, Series C, No. 2, pp. 52-192.

[2] The speeches are set out in *Publications of the Court*, Series C, No. 2, pp. 193-211, and 212-239, respectively.

[3] See *Publications of the Court*, Series B, No. 4, pp. 11-16, and Series C, No. 2, 240-245.

[4] See *Publications of the Court*, Series B, No. 4. For the composition of the Court, see p. 149 *supra*, footnote 6.

[5] Set out at p. 147 *supra*.

opinion upon the nature and not upon the merits of the dispute which under the terms of sub-section (*c*) may, in certain circumstances, form the subject of a subsequent decision. The Court therefore wishes to emphasize that no statement or argument comprised in the present opinion can be interpreted as indicating a preference on the part of the Court in favour of any particular solution as regards the whole or any individual point of the actual dispute." [1]

It follows from the diplomatic correspondence, as well as the reference in the resolution to paragraph 8 of Article 15 of the Covenant,[2] that the question submitted to the Court must be read and answered in the light of the provisions of that paragraph. Special attention is called to the word *exclusive* in the French text, to which the word "solely" (within the domestic jurisdiction) corresponds in the English text.[3]

"The question to be considered is not whether one of the parties to the dispute is or is not competent in law to take or to refrain from taking a particular action, but whether the jurisdiction claimed belongs *solely* to that party." [4]

The Court finds that, in the present state of international law, questions of nationality are, in principle, within the domain of matters which are not regulated by international law (in other words the domain of exclusive domestic jurisdiction), but it points out that it may well happen that in a matter which, like nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law, Article 15, paragraph 8, then ceases to apply as regards the States which are entitled to make such rules, and the dispute as to whether a State has or has not the right to take certain measures becomes a dispute of an international character,

[1] See *Publications of the Court*, Series B, No. 4, p. 22.

[2] Set out at p. 233 *infra*.

[3] See Covenant, Art. 15, para. 8, p. 233 *infra*.

[4] See *Publications of the Court*, Series B, No. 4, p. 23.

falling outside the scope of the exception contained in the paragraph.[1]

The following passage as to the interpretation of Article 15 of the Covenant then occurs:

"Article 15, in effect, establishes the fundamental principle that any dispute likely to lead to a rupture which is not submitted to arbitration in accordance with Article 13 shall be laid before the Council. The reservations generally made in arbitration treaties are not to be found in this Article. Having regard to this very wide competence possessed by the League of Nations, the Covenant contains an express reservation protecting the independence of States; this reservation is to be found in paragraph 8 of Article 15. Without this reservation, the internal affairs of a country might, directly they appeared to affect the interests of another country, be brought before the Council and form the subject of recommendations by the League of Nations. Under the terms of paragraph 8, the League's interest in being able to make such recommendations as are deemed just and proper in the circumstances with a view to the maintenance of peace must, at a given point, give way to the equally essential interest of the individual State to maintain intact its independence in matters which international law recognizes to be solely within its jurisdiction. It must not, however, be forgotten that the provision contained in paragraph 8 . . . is an exception to the principles affirmed in the preceding paragraphs and does not therefore lend itself to an extensive interpretation.[2] This consideration assumes especial importance in the case of a matter which by international law is, in principle, solely within the domestic jurisdiction of one party, but in regard to which the other party invokes international engagements which, in the opinion of that party, are of a nature to preclude in the particular case such exclusive jurisdiction."[3]

The Court then turns to the consideration of the different points of view presented by the French and British Governments as to how far it is necessary to proceed with an examination of the international engagements relied upon in order to decide the question in issue. It is certain, the Opinion proceeds,[4] that the mere fact that a State brings a dispute before the League of Nations does not

[1] See *Publications of the Court*, Series B, No. 4, p. 24.

[2] *Ibid.* pp. 24-25.

[3] *Ibid.* p. 25.

[4] *Ibid.* pp. 25-26.

suffice to give the dispute an international character so as to prevent the application of paragraph 8. It is equally true that the mere fact that one of the parties appeals to international engagements in order to contest the exclusive jurisdiction of the other is not enough to render paragraph 8 inapplicable.

"But when once it appears that the legal grounds (*titres*) relied on are such as to justify the provisional conclusion that they are of importance for the dispute submitted to the Council, and that the question whether it is competent for one State to take certain measures is subordinated to the formation of an opinion with regard to the validity and construction of these legal grounds (*titres*), the provisions contained in paragraph 8 of Article 15 cease to apply, and the matter ceasing to be one solely within the domestic jurisdiction of the State, enters the domain governed by international law. . . . For the foregoing reasons, the Court holds, contrary to the final conclusions of the French Government, that it is only called upon to consider the arguments and legal grounds (*titres*) advanced by the interested Governments in so far as is necessary in order to form an opinion upon the nature of the dispute." [1]

The Court then proceeds to examine the arguments of both parties and finds that each one of them, French as well as British, involves a question of international law arising in connection with the construction or effect of treaties or other international engagements,[2] and in accordance with the principles laid down above, reaches the conclusion already referred to, viz. that the dispute is not, by international law, solely a matter of domestic jurisdiction, and that, therefore, the question submitted to the Court must be answered in the negative.

The Opinion was communicated to all the Members of the League, and to the States mentioned in the Annex to the Covenant, in accordance with the usual practice in the case of Advisory Opinions.[3]

This case has been dealt with at some length because of its importance in two respects: (1) as an interpretation

[1] *Publications of the Court*, Series B, No. 4, p. 26.

[2] *Ibid.* pp. 27-31.

[3] *Ibid.* Series C, No. 2, p. 313.

of one of the fundamental provisions of the Covenant, and (2) as an example of the manner in which the advisory procedure of the Court can be used to settle disputes between contesting States. As has been seen above, this was a serious dispute between two Great Powers, one of which declined to submit to arbitration. If the contentious jurisdiction of the Court had stood alone, there would have existed no method whereby the matter could, in face of this refusal, have been brought before it for settlement. But by availing itself of Article 15 of the Covenant, the British Government was enabled to give the Council of the League of Nations seizin of the dispute, and, inasmuch as the questions in issue were of a legal character, it was a natural step to apply to the Court for a ruling rather than that the decision should be left in the hands of a political body like the Council.[1] The constitution of the Court, moreover, proved sufficiently flexible to enable it, whilst preserving the form of advisory procedure, to hear the case substantially as a contested suit. This case shows that the advisory jurisdiction offers, in cases of a legal nature, an indirect means of access to the Court which, in practice, is capable of being used as a not ineffective substitute for direct compulsory jurisdiction.[2]

In conclusion, it may be stated that when the Opinion in the present case was delivered the Agent of the French Government announced in open Court that his Government was prepared to submit the merits of the dispute to the Court.[3] In the result, however, an amicable settlement was arrived at between the two Governments which made further proceedings unnecessary. The terms, which were communicated to the Court, and announced by the President at a public sitting,[4] provided that British nationals up to and including the second generation born in Tunis

[1] In this case the initiative for the reference by the Council to the Court arose out of a special agreement between the contesting States. As to reference by the Council in general, see pp. 67-71 *supra*.

[2] See p. 68 *supra*.

[3] See *Publications of the Court*, Series C, No. 2, pp. 12 and 13.

[4] *Ibid.* No. 3, vol. i. pp. 3, 55-62.

should be entitled to decline French nationality, and that French nationality should not be imposed on any British national born in Tunis before November 8, 1921, without an opportunity being afforded to him to decline it. These terms were not to imply an abandonment of the point of view maintained by each Government in the diplomatic correspondence and the proceedings before the Court, nor would the principle adopted in the present agreement be applicable elsewhere than in Tunis. As to Morocco, it was agreed that further proceedings were unnecessary at present, as the question was not for the time being one of practical importance. On this question, therefore, the two Governments maintained their present positions and reserved their rights.[1]

ADVISORY OPINION AS TO THE STATUS OF EASTERN CARELIA.

This was the first of four cases dealt with by the Court at its third (ordinary) session, which began on June 15, 1923, and continued until September 15, 1923. The question submitted to the Court related to a dispute between Finland and Russia in regard to the obligations of Russia, under certain international instruments, to apply a special régime in Eastern Carelia, and the case was of a somewhat peculiar character, inasmuch as Russia is not a member of the League of Nations, and the Soviet Government categorically refused to have anything to do either with the League or the Court.

Eastern Carelia[2] is an extensive territory lying between the White Sea and Lake Onega on the east, and Finland on the west. Finland became entirely separated from Russia in 1917, and soon afterwards war broke out between the Soviet Government and Finland, in the course of which two of the communes of Eastern Carelia, Repola and Porajärvi, were placed under the protection of Finland. The war was terminated by the Treaty of

[1] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 3, 55-62.

[2] The statement of facts in the text is based upon that contained in the Court's Opinion, *Publications of the Court*, Series B, No. 5, pp. 16-24.

Dorpat, which was concluded on October 14, 1920, and came into force on January 1, 1921. Article 10 of this Treaty provided that Finland should withdraw her troops from the two communes, which "shall be reincorporated in the State of Russia and shall be attached to the autonomous territory of Eastern Carelia, which is to include the Carelian population of the Governments of Archangel and Olonetz, and which shall enjoy the national right of self-determination."[1] Article 11 stated that the Contracting Powers (Finland and Russia) had adopted the provisions therein set out for the benefit of the local population of the two communes. These provisions guaranteed certain privileges in connection with property and local affairs.[2] Whilst Eastern Carelia is described therein as an "autonomous territory," the treaty itself is silent as to the nature and extent of the autonomy.

At the meeting for signature of the Treaty on October 14, 1920, a declaration was made by the Russian Delegation with regard to the autonomy of Eastern Carelia whereby a specified régime was guaranteed, and this declaration was inserted in the protocol of signature of the Treaty.[3] It was a matter of acute controversy between the Finnish and Soviet Governments what was the true nature of this declaration. The Finnish Government maintained that it formed part of the contract, and that the Treaty was signed on the terms that the declaration was as binding as the Treaty itself, whereas the Soviet Government maintained that the declaration was not by way of contract, but was only declaratory of an existing situation and made merely for information. This controversy was really the crux of the dispute.

Soon after the coming into force of the Treaty, disputes arose between the two Governments as to alleged failure to carry out the Treaty on a great number of points, one of which related to the autonomy of Eastern Carelia. The

[1] See *Publications of the Court*, Series B, No. 5, pp. 16 and 17.

[2] *Ibid.* pp. 17 and 18.

[3] The declaration is set out in *Publications of the Court*, Series B, No. 5, pp. 20-22.

diplomatic correspondence shows: (1) That there was not and never had been any dispute as to the legal existence of the Treaty of Dorpat and the obligatory force of its stipulations; (2) that both parties, while acknowledging the existence and obligatory force of the Treaty, differed as to the interpretation and legal effect of certain provisions, particularly Articles 10 and 11; (3) that Finland claimed, while Russia denied, that the declaration referred to above constituted part of the peace terms.

Finland asked the League of Nations to take the matter up, and after some discussion the Council, on January 14, 1922, adopted a resolution[1] stating that it was willing to consider the question if the two parties concerned agreed, and suggesting that one of the Baltic States which was in diplomatic relations with the Government of Moscow might ascertain the views of that Government on this point. The Esthonian Government accordingly invited the Russian Government to submit the question of Eastern Carelia to the examination of the Council on the basis of Article 17 of the Covenant.[2] The Russian Government declined. Thereupon the Finnish Government again brought the matter before the Council, which, on April 21, 1923, adopted a resolution submitting the present question to the Court. This resolution is in the following terms:

"The Council of the League of Nations requests the Permanent Court of International Justice to give an advisory opinion on the following question, taking into consideration the information which the various countries concerned may equally present to the Court:

"Do Articles 10 and 11 of the Treaty of Peace between Finland and Russia signed at Dorpat on October 14, 1920, and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character, which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?

"The Secretary-General is authorized to submit this application to the Court, together with all the documents relating to the

[1] Set out in *Publications of the Court*, Series B, No. 5, p. 23.

[2] Set out at p. 235 *infra*.

question, to inform the Court of the action taken by the Council in the matter, to give all necessary assistance in the examination of the question, and to make arrangements to be represented, if necessary, at the Court." [1]

The resolution was duly communicated to the Court, with the formal request for opinion in the usual manner.[2]

In conformity with Article 73 of the Rules of Court,[3] notice of the request was given to the Members of the League through the Secretary-General, and to the States mentioned in the Annex to the Covenant. Furthermore, the Registrar of the Court was directed to notify the Soviet Government.[4]

On June 11, 1923, M. Tchitcherin, the Russian People's Commissary for Foreign Affairs, despatched to the Court a telegram, in which he entirely repudiated the jurisdiction of the League of Nations and the Court, and declared that it was quite impossible for the Russian Government to take any part in the discussion of the question before the Court.[5]

At the request of the Finnish Government[6] the Court heard their representative on June 22 and 26, 1923.[7] On the latter occasion, the Finnish representative addressed the Court, at its express invitation,[8] upon the question of whether the Court had jurisdiction to give the opinion which the Council of the League had asked of it, and it is interesting to notice that in the course of his speech in support of the affirmative view he placed strong reliance upon the Court's Opinion in the case of the *Tunis and Morocco Nationality Decrees*.[9]

The Opinion of the Court was delivered on July 23,

[1] See *Publications of the Court*, Series B, No. 5, pp. 7 and 8.

[2] *Ibid.* p. 6.

[3] See p. 280 *infra*.

[4] See *Publications of the Court*, Series B, No. 5, p. 9, and Series C, No. 3, vol. i. p. 65.

[5] *Ibid.* Series B, No. 5, pp. 12-14; also printed in Series C, No. 3, vol. i. pp. 67-70.

[6] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 71 and 72.

[7] *Ibid.* pp. 5-7, 11.

[8] *Ibid.* vol. ii. pp. 169-170.

[9] *Ibid.* vol. i. pp. 122-124, 129-130. The *Tunis and Morocco* case is dealt with above at pp. 144-156.

1923, when by a majority of seven to four[1] the Court declined to rule upon the question referred to it. The Opinion examines the question stated in the Council's resolution[2] for the purpose of ascertaining its precise nature and bearing, and comes to the conclusion that the real question before the Court largely turns upon the above-mentioned declaration of the Russian Delegation at the Dorpat Peace Conference.[3]

"The question" (says the Opinion) "whether the Declaration forms part of the obligations into which Russia entered, as Finland asserts, or was merely by way of information, as Russia contends, is, in the very nature of things, a question of fact. The question is: Was such an engagement made?"[4]

The Court rules out the contention that the question submitted should be understood as a preliminary one relating to the nature of the dispute by analogy to Article 15, paragraph 8, of the Covenant[5] on the ground that such an interpretation of the question is contrary to the facts of the case and not warranted by the terms of the question.[6]

The Court, after pointing out that the opinion which it has been requested to give bears on an actual dispute between Finland and Russia, makes the following important statement:

"As Russia is not a Member of the League of Nations, the case is one under Article 17 of the Covenant.[7] According to this Article, in the event of a dispute between a Member of the League and a State which is not a Member of the League, the State not a Member of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, and

[1] M. Loder, Lord Finlay, Mr. Moore, M. Oda, M. Anzilotti, M. Huber and M. Wang concurred in the Opinion, whilst MM. Weiss, Nyholm, de Bustamente and Altamira dissented. See *Publications of the Court*, Series B, No. 5, pp. 7 and 29.

[2] See p. 158 *supra*.

[3] See *Publications of the Court*, Series B, No. 5, pp. 24-26.

[4] *Ibid.* p. 26.

[5] Set out at p. 233 *infra*. See *Tunis and Morocco* case, pp. 144-156 *supra*.

[6] *Ibid.* pp. 26-27.

[7] Set out at p. 235 *infra*.

if this invitation is accepted, the provisions of Articles 12 to 16[1] inclusive shall be applied with such modifications as may be deemed necessary by the Council. This rule, moreover, only accepts and applies a principle which is a fundamental principle of international law, namely, the principle of the independence of States. It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement. Such consent can be given once and for all in the form of an obligation freely undertaken, but it can, on the contrary, also be given in a special case apart from any existing obligation. The first alternative applies to the Members of the League who, having accepted the Covenant, are under the obligation resulting from the provisions of this pact dealing with the pacific settlement of international disputes. As concerns States not Members of the League, the situation is quite different ; they are not bound by the Covenant. The submission, therefore, of a dispute between them and a Member of the League for solution according to the methods provided for in the Covenant, could take place only by virtue of their consent. Such consent, however, has never been given by Russia. On the contrary, Russia has, on several occasions, clearly declared that it accepts no intervention by the League of Nations in the dispute with Finland. The refusals which Russia had already opposed to the steps suggested by the Council have been renewed upon the receipt by it of the notification of the request for an advisory opinion. The Court therefore finds it impossible to give its opinion on a dispute of this kind." [2]

The Court then refers to another reason which renders it "very inexpedient" that it should attempt to deal with the present question, namely, that the question whether Finland and Russia contracted on the terms of the declaration already referred to is really one of fact. To answer it would require the consideration of evidence and the calling of witnesses, and the Court would, of course, be at a very great disadvantage owing to the fact that Russia refuses to take part in the matter. It is indeed doubtful whether sufficient materials would be available for a judicial conclusion upon the question of fact: What did the parties agree to? The following general observation is added:

[1] Set out at pp. 231-235 *infra*.

[2] See *Publications of the Court*, Series B, No. 5, pp. 27-28.

"The Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to facts, but under ordinary circumstances, it is certainly expedient that the facts upon which the opinion of the Court is desired should not be in controversy, and it should not be left to the Court itself to ascertain what they are." [1]

"The Court is aware" (the Opinion proceeds) "that it is not requested to decide a dispute, but to give an advisory opinion. This circumstance, however, does not essentially modify the above considerations. The question put to the Court is not one of abstract law, but concerns directly the main point in controversy between Finland and Russia, and can only be decided by an investigation into the facts underlying the case. Answering the question would be substantially equivalent to deciding the dispute between the parties. The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court." [2]

These were the reasons for which the Court declined to answer the question referred to it. As already mentioned,[3] four judges dissented, declaring "that they are unable to share the views of the majority of the Court as to the impossibility of giving an advisory opinion on the Eastern Carelian question," [4] but not stating their reasons.

The immediate importance of this case may be said to lie in the fact that it decides that the Court has power to refuse to give an advisory opinion. The passages quoted above, however, show that other points of general application were dealt with touching the scope of the Court's jurisdiction and the nature of its advisory function. Thus, it is decided that a non-member of the League of Nations which, as party to a dispute with another State, declines the jurisdiction of the Council and the Court, cannot be made subject to the jurisdiction of the Court, even by the indirect means of the advisory procedure. The case also makes it clear that the Court when exercising its advisory jurisdiction is acting in a strictly judicial capacity and, therefore, will be wary of deciding a disputed question of

[1] See *Publications of the Court*, Series B, No. 5, p. 28.

[2] *Ibid.* pp. 28-29.

[3] See p. 160 *supra*.

[4] See *Publications of the Court*, Series B, No. 5, p. 29.

fact upon *ex parte* evidence. It should, however, be observed that the Court did not lay down as a general proposition that it would necessarily decline to deal with questions of fact by way of advisory opinion. The passage relating to this point is set out above.[1]

One more comment upon this Opinion may be made in regard to the following passage which occurs in it:

"There has been some discussion as to whether questions for an advisory opinion, if they relate to matters which form the subject of a pending dispute between nations, should be put to the Court without the consent of the parties. It is unnecessary in the present case to deal with this topic." [2]

This observation was made with reference to a number of statements relating to this point in the documents and oral argument.[3] It should be noticed that the way in which the matter presented itself in the present case was in connection with a non-member of the League, and a non-member resolutely declining to take any part in the proceedings of the League. The Court expressly refrains from indicating any view as to whether in such circumstances the Council should refer the dispute to the Court. But the above-cited passage as it stands may be said to go further and to contemplate cases where the dispute is between Members of the League. If so, it is submitted that the eventuality of such a dispute being referred to the Court without the consent of one or both parties can hardly occur in practice for the following reasons: Under Article 4, paragraph 6, of the Covenant,[4] any Member of the League not represented on the Council must be invited to send a Representative to sit as a member at any meeting of the Council specially affecting the member; under Article 5, paragraph 1,[5] except where otherwise expressly provided in the Covenant, decisions at any meeting of the Assembly or Council must be taken unanimously by all

[1] See p. 162 *supra*.

[2] See *Publications of the Court*, Series B, No. 5, p. 27.

[3] See *Publications of the Court*, Series C, No. 3, vol. ii. pp. 124, 129, 142, 151, 160, 208; Series C, No. 3, vol. i. pp. 123, 126-127, 130, 133-135.

[4] Set out at p. 229 *infra*.

[5] Set out at p. 229 *infra*.

the States represented at the meeting; and under Article 14[1] there is no provision that the decision to refer a dispute to the Court for advisory opinion shall be other than unanimous.

The above Advisory Opinion came before the Council of the League at a public meeting held at Geneva on September 27, 1923, when a resolution was adopted stating that "the Council notes the opinion expressed by the Court."[2] At the same time the Council adopted a report in which the following passage occurs:

"The Council feels sure that the opinion expressed by the Court in connection with the procedure described by Article 17 of the Covenant could not exclude the possibility of resort by the Council to any action, including a request for an advisory opinion from the Court, in a matter in which a State non-member of the League, unwilling to give information, is involved, if the circumstances should make such action necessary to enable the Council to fulfil its functions under the Covenant of the League in the interests of peace."[3]

The Case of the s.s. "Wimbledon."

This is the first contested case properly so called, upon which the Court has been called upon to adjudicate. Moreover, it was a case brought before the Court under its compulsory jurisdiction by means of a unilateral application, and in this respect constitutes a landmark in the history of international proceedings. The facts that gave rise to it were as follows:[4]

An English steamship, the *Wimbledon*, had been time chartered by a French company, "Les Affrêteurs Réunis," whose offices were in Paris. According to the terms of the charter party, signed on January 28, 1919, as extended by subsequent agreement, the vessel had been demised to the company for a period of 24 months from May 3, 1919.

[1] Set out at p. 232 *infra*.

[2] See *League of Nations Official Journal*, 4th year, No. 11, pp. 1335-1337.

[3] See *ibid.* Annex 576*a*, pp. 1501-1502.

[4] The statement of facts is taken from the Judgment. See *Publications of the Court*, Series A, No. 1, pp. 18-20.

The vessel whilst so chartered had taken on board at Salonica 4200 tons of munitions and artillery stores consigned to the Polish Naval Base at Danzig. On the morning of March 21, 1921, it presented itself at the entrance of the Kiel Canal, but the Director of Canal Traffic refused to allow it to pass, basing his refusal upon the neutrality Orders issued by Germany in connection with the Russo-Polish war, and upon instructions which he had received from the German Government. On the next day but one, March 23, the French Ambassador at Berlin requested the German Government to withdraw this prohibition and to allow the s.s. *Wimbledon* to pass through the canal in conformity with Article 380 of the Treaty of Versailles.[1] On March 26, a reply was given to the effect that the German Government was unable to allow a vessel which had on board a cargo of munitions and artillery stores consigned to the Polish Military Mission at Danzig to pass through the canal because the German Neutrality Orders of July 25 and 30, 1920, prohibited the transit of cargoes of this kind destined for Poland or Russia, and Article 380 of the Treaty of Versailles[1] was not an obstacle to the application of these Orders to the Kiel Canal. On the evening of March 30 the charterers telegraphed to the captain of the *Wimbledon* ordering him to continue his voyage by the Danish Straits. The vessel weighed anchor on April 1, and, proceeding by Skagen, reaching Danzig, its port of destination, on April 6; it had been detained for eleven days, to which must be added two days for deviation.

In the meantime, the *Wimbledon* incident had not failed to give rise to active negotiations between the Conference of Ambassadors and the Berlin Government; but these negotiations led to no result. Thereupon, the Governments of Great Britain, France, Italy, and Japan decided to bring the matter before the Court, and for this purpose, on January 16, 1923, addressed an application[2] to the Registrar instituting the proceedings.

[1] See p. 166 *infra*.

[2] Set out in *Publications of the Court*, Series A, No. 1, pp. 6-8.

The jurisdiction of the Court so appealed to arises in this way: Article 380 of the Treaty of Versailles provides that "the Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of perfect equality."

Article 386 of the same treaty provides that "in the event of violation of any of the conditions of Articles 380 to 386, or of disputes as to the interpretation of these Articles, any interested Power can appeal to the jurisdiction instituted for the purpose by the League of Nations."

By Article 36 of the Statute of the Court [1] "the jurisdiction of the Court comprises . . . all matters specially provided for in treaties and conventions in force" and by Article 37 [2] "when a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court shall be such tribunal." [3]

It was therefore open to the States complaining of a violation of Article 380 by Germany to bring this matter before the Court by means of an application under Article 40 of the Statute.[4]

The application was made jointly by the Governments of Great Britain, France, Italy and Japan, which together constitute the Principal Allied Powers under the Treaty of Versailles, and was in the form prescribed by Article 35 of the Rules of Court.[5]

In conformity with Article 40 of the Statute [6] the Registrar of the Court immediately upon receipt of the application communicated a copy to the German Government [7] and notified the Members of the League of Nations through the Secretary-General, sending him

[1] Set out at p. 249 *infra*. [2] Set out at p. 249 *infra*.

[3] See pp. 61, 62-64 *supra*, where these provisions are discussed.

[4] Set out at p. 250 *infra*.

[5] See pp. 92-98 *supra*, and pp. 270-271 *infra*. The application is set out in *Publications of the Court*, Series A, No. 1, pp. 6-8.

[6] See p. 250 *infra*.

[7] See *Publications of the Court*, Series C, No. 3, vol. ii. p. 216.

copies for distribution to each Member.[1] On January 18, 1923, the Court fixed time limits for the presentation of the written pleadings, of which the contesting States were duly informed.[2] In accordance with Article 39 of the Rules of Court, inasmuch as the present proceedings belonged to the class instituted by an application, the pleadings to be delivered consisted of a Case by the applicant Powers, followed by a Counter-case by the respondent Power; then a Reply and finally a Rejoinder.[3] On the same day the President of the Court addressed a letter to the German Government drawing their attention to the fact that under Article 31 of the Statute[4] Germany was entitled to choose a judge of its nationality to participate *ad hoc* in the adjudication of the case.[5] Further, the Registrar, having regard to the provisions of Article 63 of the Statute,[6] transmitted direct to the Government of each of the other Signatories of the Treaty of Versailles a copy of the application instituting the proceedings.

The pleadings were in due course deposited with the Registrar and communicated by him to the opposing party.[7]

On March 21, 1923, the German Government informed the President of the Court that they had appointed Mr. Walter Schücking as their national judge.[8]

On May 22, 1923, the Polish Government put in an application to intervene on the side of the applicants.[9]

[1] *Ibid.* p. 219.

[2] *Ibid.* pp. 219-221. These time limits were extended at the request of the applicants. See *Ibid.* pp. 225-227.

[3] These documents are printed in *Publications of the Court*, Series C, No. 3, supplementary volume as to Art. 39 of the Rules of Court, see pp. 102-103 *supra*, and p. 272 *infra*.

[4] See pp. 247-248 *infra*.

[5] See *Publications of the Court*, Series C, No. 3, vol. ii. p. 222.

[6] See p. 254 *infra*.

[7] See *Publications of the Court*, Series C, No. 3, vol. ii. pp. 228-229, 231-234, 235-239, 242, 246-247. The pleadings are reproduced in Series C, No. 3, supplementary volume.

[8] See *ibid.* p. 234.

[9] The application is set out in *Publications of the Court*, Series A, No. 1, pp. 9-10. See also Series C, No. 3, vol. ii. pp. 239-240.

This application was based on Article 62 of the Statute[1] and recited the fact that the cargo of the vessel was destined for that Government. The Registrar duly communicated it to the parties, and intimated to them that the President of the Court had fixed June 15, 1923, as the date by which any observations they might desire to make should be sent in.[2] The British Government alone availed itself of this right and presented certain observations submitting that Poland's right of intervention arose under Article 63 and not under Article 62 of the Statute.[3]

On June 25, 1923, the Court [4] heard the representatives of Poland, followed by those of France, Great Britain, Italy and Japan (the German representative did not attend), upon the application of Poland to intervene,[5] when the Polish Government declared that they did not insist upon their claim to intervene under Article 62 of the Statute, but were content to base their application upon Article 63, and the representatives of the other Powers raised no objection to such intervention.

The judgment upon the Polish application was delivered on June 28, 1923, the Court unanimously accepting the intervention.[6] Attention has been called to the terms of this judgment in the preceding Chapter.[7] In view of the Polish Government's abandonment of its exclusive reliance on Article 62 of the Statute [8] it was held to be

[1] See p. 254 *infra*.

[2] In accordance with Art. 59 of the Rules of Court, p. 276 *infra*. See *Publications of the Court*, Series C, No. 3, vol. ii. pp. 241-242, 243-244.

[3] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 106-108. The document was immediately communicated to Poland and the parties by the Registrar. See *ibid.* vol. ii. pp. 248-249.

[4] The Court was composed as follows : MM. Loder, President ; Weiss, Vice-President ; Lord Finlay, MM. Nyholm, Moore, de Bustamente, Altamira, Oda, Anzilotti, Huber, judges ; Wang, deputy-judge ; and Schücking, German national judge.

[5] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 8-10, and pp. 116-122.

[6] See *Publications of the Court*, Series A, No. 1, pp. 11-14 ; Series C, No. 3, vol. i. p. 12.

[7] See p. 112 *supra*.

[8] Set out at p. 254 *infra*.

unnecessary to decide whether the intervention was justified by an interest of a legal nature within the meaning of that Article, and the Court allowed the intervention under Article 63[1] which clearly entitled Poland to the right claimed.[2]

This preliminary point being disposed of, the hearing of the substantive case came on in open Court on July 5, 1923, and continued during four days.[3] The case for the applicant Powers was opened by M. Basdevant (Professor of the Faculty of Law at Paris), representing the French Government, who dealt fully with the facts and law.[4] He was followed by Sir Cecil Hurst, K.C.B., K.C. (Legal Adviser to the Foreign Office), on behalf of the British Government, who supplemented the main statement of the applicant's case by drawing attention to the nature of the international régimes applicable to the Suez and Panama Canals and their similarity to that laid down by the Treaty of Versailles in regard to the Kiel Canal.[5] The Agents of the Italian and Japanese Governments added brief statements,[6] and the Agent of the Polish Government associated himself with the arguments and conclusions of his colleagues.[7]

Stated in very general terms the main contentions of the applicants were as follows: (1) Article 380 of the Treaty of Versailles[8] lays down the general rule as to freedom of navigation through the Kiel Canal. This provision must be given its natural meaning. It expressly contemplates the existence of war and defines Germany's obligations with reference to that situation. (2) Article 381 of the same Treaty enumerates the exceptions from the general rule. These exceptions, which are all connected with internal administration, are exhaustive. (3) There is no sovereign right or duty in the State

[1] Set out at p. 254 *infra*.
[2] See *Publications of the Court*, Series A, No. 1, pp. 12-13.
[3] See *ibid.* Series C, No. 3, vol. i. pp. 13-22.
[4] See *ibid.* pp. 137-252.
[5] See *ibid.* pp. 252-277.
[6] *Ibid.* pp. 278-298.
[7] *Ibid.* p. 16.
[8] See p. 166 *supra*.

(Germany in this case) by reason of neutrality in war to disregard or override its treaty obligations. In particular, the history of the Suez and Panama Canals shows that the allowance by the neutral sovereign of a canal of free passage to contraband and even to war-ships of belligerents is not a breach of neutrality.

The case for the respondent (Germany) was argued by Mr. Schiffer (former Minister of Justice).[1] He began by giving a picture of the political situation in Germany in relation to the Russo-Polish war with a view to showing the importance of strict neutrality. Turning to the relevant provisions of the Treaty of Versailles, he disputed the meaning attributed to Articles 380 and 381 by the applicants and relied upon Article 327 which he maintained must be regarded as throwing light upon these Articles. His main argument, however, was that Germany, in virtue of her sovereignty over the Kiel Canal was entitled, and indeed bound, to take such measures to preserve her neutrality as she thought fit, and that the provisions of the Treaty of Versailles must be read subject to this right. He asked the Court to interpret the Treaty according to its intention which, he suggested, was to safeguard this principle, rather than strictly according to the precise terms of the relevant Articles.

M. Basdevant replied[2] and Mr. Schiffer rejoined.[3]

The judgment was delivered on August 17, 1923, when the Court by a majority of eight to three found for the Applicants.[4]

The first question touched upon was in regard to the

[1] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 298-363. He spoke in German, by permission of the Court, his speech being translated into French by an interpreter provided by the respondent. The French was the authoritative version and was in turn rendered into English by the Court interpreters. See *ibid.* pp. 17-18.

[2] See *Publications of the Court*, Series C, No. 3, vol. i. pp. 369-395.

[3] *Ibid.* pp. 396-407.

[4] See *Publications of the Court*, Series A, No. 1; Series C, No. 3, vol. i. pp. 36 and 37. For the composition of the Court see page 168, footnote [4] above. The dissenting judges were MM. Anzilotti, Huber and Schücking.

jurisdiction of the Court.[1] Upon this point the judgment states that

"The Court has no doubt that it can take cognizance of the application instituting proceedings in the form in which it has been submitted. It will suffice to observe for the purposes of this case that each of the four Applicant Powers has a clear interest in the execution of the provisions relating to the Kiel Canal, since they all possess fleets and merchant vessels flying their respective flags. They are, therefore, even though they may be unable to adduce a prejudice to any pecuniary interest, covered by the terms of Article 386, paragraph 1 (of the Treaty of Versailles)." [2]

The relevant Articles of the Treaty are then reviewed and the judgment proceeds:

"The Court considers that the terms of Article 380[3] are categorical and give rise to no doubt. It follows that the Canal has ceased to be an internal and national navigable waterway, the use of which by the vessels of States other than the riparian State is left entirely to the discretion of that State, and it has become an international waterway intended to provide under the treaty guarantee easier access to the Baltic for all nations of the world. Under its new régime, the Kiel Canal must be open, on a footing of equality, to all vessels, without making any distinction between war vessels and vessels of commerce, but on one express condition, that these vessels must belong to nations at peace with Germany. The right of the (German) Empire to defend herself against her enemies by refusing to allow their vessels to pass through the canal is therefore proclaimed and recognized. In making this reservation in the event of Germany not being at peace with the nation whose vessels of war or of commerce claim access to the Canal, the Peace Treaty clearly contemplated the possibility of a future war in which Germany was involved. If the conditions of access to the Canal were also to be modified in the event of a conflict between two Powers remaining at peace with the German Empire, the Treaty would not have failed to say so. It has not said so and this omission was no doubt intentional." [4]

The Court further states that the intention of the authors of the Treaty to place the Kiel Canal under an international régime providing for complete freedom of

[1] See Statute, Art. 36, para. 1, and Art. 37, p. 249 *infra*; and cf. Treaty of Versailles, Art. 386, p. 166, *supra*.

[2] See p. 166 *supra*.

[3] See p. 166 *supra*.

[4] See *Publications of the Court*, Series A, No. 1, pp. 22-23.

transit is strongly indicated by a comparison between the wording of Article 380 and the earlier provisions of Part XII. relating to inland waterways : the provisions referring to the Kiel Canal are separate and self-contained and the idea underlying them is not to be sought by drawing an analogy from the preceding Articles but rather by arguing *a contrario*, a method of argument which excludes them.[1]

The judgment refers to the question whether the right of free passage should be regarded as a servitude by international law, and therefore construed restrictively. The Court declines to decide the question, " which is moreover of a very controversial nature, whether in the domain of international law, there really exist servitudes analogous to the servitudes of private law." Then follows this noteworthy passage :

" Whether the German Government is bound by virtue of a servitude or by virtue of a contractual obligation undertaken towards the Powers entitled to benefit by the terms of the Treaty of Versailles, to allow free access to the Kiel Canal in time of war as in time of peace to the vessels of all nations, the fact remains that Germany has to submit to an important limitation of the exercise of the sovereign rights which no one disputes that she possesses over the Kiel Canal. This fact constitutes a sufficient reason for the restrictive interpretation, in case of doubt, of the clause which produces such a limitation. But the Court feels obliged to stop at the point where the so-called restrictive interpretation would be contrary to the plain terms of the article and would destroy what has been clearly granted." [2]

The judgment then deals with the argument that the general grant of a right of passage through the Canal cannot deprive Germany of the exercise of her rights as a neutral Power in time of war, because this grant would imply the abandonment of a personal and imprescriptible right, forming an essential part of her sovereignty, which she neither could, nor intended to, renounce by anticipation. The Court rejects this contention—it is gainsaid by consistent international practice and contrary to the

[1] *See Publications of the Court*, Series A, No. 1, pp. 23-24.

[2] *Ibid.* pp. 24-25.

wording of Article 380 which clearly contemplates war as well as peace.

"The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction on the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty." [1]

Reference is made to the precedents afforded by the Suez and Panama Canals.[2] These precedents invalidate the argument that Germany's neutrality would have been necessarily imperilled by allowing the *Wimbledon* to pass because that vessel was carrying contraband consigned to a belligerent State.

"Moreover they are merely illustrations of the general opinion according to which when an artificial waterway connecting two open seas has been permanently dedicated to the use of the whole world, such waterway is assimilated to natural straits in the sense that even the passage of a belligerent man-of-war does not compromise the neutrality of the sovereign State under whose jurisdiction the waters in question lie." [3]

Finally, Germany could not rely upon the provisions of the neutrality Orders which she had issued. These cannot prevail against the obligations which she had accepted under Article 380.

"Germany was free to declare and regulate her neutrality in the Russo-Polish war, but subject to the condition that she respected and maintained intact the contractual obligations which she entered into at Versailles on June 28th, 1919." [4]

The claim for compensation is then dealt with.

"The Court having arrived at the conclusion that the respondent, Germany, wrongfully refused passage through the Canal to the vessel *Wimbledon* that country is responsible for the loss occasioned by this refusal, and must compensate the French Government, acting on behalf of the Company known as 'Les Affrêteurs Réunis' which sustained the loss." [5]

[1] *Ibid.* p. 25. [2] *Ibid.* pp. 25-28. [3] *Ibid.* p. 28.
[4] *Ibid.* pp. 28-30. [5] *Ibid.* p. 30, and see p. 164 *supra*.

The claim was originally formulated under four heads: (1) Demurrage, (2) Deviation, (3) Fuel, (4) Contribution of the vessel to the general expenses of the Company and compensation for loss of profit. Head (4) was, however, modified during the hearing; loss of profit was abandoned and the claim divided into (*a*) contribution of the vessel to the general expenses, and (*b*) stamp duty and other costs of recovery. The Court allowed the first three heads of damage and, the figures not being in dispute, awarded 140,749 fcs. 35 centimes. It rejected the fourth head. Payment was ordered to be made in French francs within three months, with interest at 6 per cent. from the date of the judgment to the date of payment.[1]

The Court declared that it saw no reason for departing from the general rule laid down in Article 64 of the Statute[2] that each party should bear its own costs.

The judgment was immediately communicated by the Registrar to each of the parties, to the Secretary-General of the League for transmission to the Members, and to the States mentioned in the Annex to the Covenant.[3]

Although the actual issue decided by this case may not be of great importance, the significance of the proceedings as a whole is too obvious to require emphasis. They afford the first instance of international litigation, which both in form and in substance approximates closely to an action in a domestic court of law. The parties were Great Powers, and the document upon the construction of which the decision turned was the Treaty of Versailles. From the point of view of international jurisprudence, the passages from the judgment that are cited above make it plain that legal principles relating to the interpretation of treaties were laid down which are of extensive application, and, if it is permissible to say so with great respect, these principles are characterized by a wisdom and

[1] *Publications of the Court*, Series A, No. 1, pp. 31-32.

[2] Set out at p. 254 *infra*.

[3] *Publications of the Court*, Series A, No. 1, p. 34; Series C, No. 3, vol. ii. p. 279; and Rules of Court, Art. 63, p. 277 *infra*.

common-sense calculated to inspire confidence in the work of the Court as an instrument for the development of international law.

Advisory Opinion Concerning the German Settlers in Poland.

This case, which was also heard during the third session of the Court, related to questions touching the obligations of Poland under the Treaty of June 28, 1919, between her and the Principal Allied and Associated Powers, (commonly referred to as the "Minorities Treaty,") and the jurisdiction of the League of Nations thereunder.

The following provisions of the Treaty are those immediately relevant to this case :

Article 1 :

"Poland undertakes that the stipulation contained in Articles 2 to 8 of this Chapter shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them."

Article 7 :

"All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion. . . ."

Article 8 :

"Polish nationals who belong to racial religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. . . ."

Article 12 :

"Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern, and shall be placed under the guarantee of the League of Nations. . . .

"Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these

obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

"Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

The facts, which were somewhat complicated, may be briefly summarized as follows :[1]

There existed in Poland a considerable number of persons of German race and language known as "settlers" or "colonists," who, or whose ancestors, were settled upon the land by the Prussian Government for the purpose of strengthening the German element in the country, particularly on the borders of Prussia. These settlements were made in pursuance of a policy of "Germanization," which was organized by virtue of various Prussian Statutes the first and most important of which was the Colonisation Law of 1886.[2] In accordance with these Statutes German farmers were settled upon the land in Poland under two kinds of tenure, *Rentengutsvertrag* and *Pachtvertrag*. The former involved the conveyance of the ownership in the land in return for payment of a fixed rent ;[3] the latter was a mere lease.[4] In order to acquire the right of ownership the holder of a *Rentengutsvertrag* had to perfect his title by obtaining the *Auflassung* or transfer and consequent inscription in the land Registry.[5] The

[1] The statement of facts in the text is based upon the documents and speeches in the case. The documents will be found in *Publications of the Court*, Series C, No. 3, vol. iii. and the speeches in Series C, No. 3, vol. i.

[2] See *Publications of the Court*, Series C, No. 3, vol. iii. tome ii. pp. 920, 934.

[3] *Ibid.* tome i. p. 312.

[4] *Ibid.* p. 347.

[5] *Ibid.* pp. 317, 324 ; Series B, No. 6, p. 30.

legal position of the settler between the date of the handing over of the property and the grant of *Auflassung* was the subject of dispute. The Polish Government contended that his right to the land was inchoate and not enforceable at law, whereas the German Government maintained the contrary.[1] In any event, however, it was a contractual, and not a real right.

It must also be mentioned that both under the *Rentengutsvertrag* and *Pachtvertrag* certain powers were reserved to the Prussian State by way of re-purchase and otherwise for the purpose of safeguarding the attainment of the political object of the settlement.[2]

By the Treaty of Versailles [3] extensive territories theretofore under Prussian sovereignty were transferred to the newly constituted Polish State, including the lands upon which the colonists were settled, and by Article 256 of that Treaty Poland acquired all property and possessions situated in those territories belonging to the German Empire or States. Parts of these territories were already in Polish possession before the signature of the treaty. It should be noted, moreover, that by the conditions of the Armistice between Germany and the Allies concluded on November 11, 1918, certain obligations were undertaken by Germany with regard to the non-diminution of the property of the State during the Armistice period ; [4] but the true meaning of the provisions in question was the subject of controversy before the Court.

On July 14, 1920, Poland enacted a law the effect of which was (1) to avoid all transactions parting with or diminishing the real rights in Poland of the German Empire, or States, entered into after November 11, 1918 ; (2) to give power to the Polish Government to expel from their land all persons holding the same on the basis of

[1] See *Publications of the Court*, Series B, No. 6, pp. 30-31.

[2] *Ibid.* Series C, No. 3, vol. iii. tome i. pp. 312-326, 363-364.

[3] See Article 87.

[4] See Conditions of Armistice, Art. 19 ; Protocol signed at Spa, Sept. 1, 1918, Clause I., set out in *Publications of the Court*, Series C, No. 3, vol. iii. tome i. pp. 586, 587.

an agreement concluded with the German Empire or the German States.[1]

In execution of this law the Polish Government proceeded through the Courts, to oust certain occupants of the land in pursuance of notices served on them.[2] The measures of expulsion applied to the following categories of persons occupying farms under the colonisation system described above, viz.: (*a*) 2781 settlers holding under *Rentengutsverträge* but none of whom had obtained the *Auflassung* by November 11, 1918; (*b*) 760 settlers who before November 11, 1918, held under *Pachtverträge*, and subsequently obtained a *Rentengutsvertrag* in substitution. 17,240 settlers, on the other hand, who held under *Rentengutsverträge* completed by *Auflassung* before November 11, 1918, were not affected; their titles were recognized as valid by the Polish Government.[3]

Both the Treaty of Versailles and the Minorities Treaty contain provisions in regard to the acquisition of Polish nationality by the inhabitants of the territory transferred to Poland which are not material for the purposes of the present case,[4] but it is important to bear in mind that it is only such of the colonists as were Polish nationals that are in question here, and the case proceeded throughout upon the footing that the persons liable to expulsion as described above had acquired Polish nationality.

The attention of the League of Nations was first called to the matter by an association known as the "German League for the Protection of the Rights of Minorities in Poland," of Bydgoszcz (Bromberg), which on November 8, 1921, by a telegram addressed to the Secretary-General stated that several thousand families of German origin had, in violation of the Minorities Treaty, been called upon by the Polish Government to vacate their

[1] See *Publications of the Court*, Series C, No. 3, vol. iii. tome ii. p. 813.

[2] See *Publications of the Court*, Series B, No. 6, p. 15.

[3] See *Publications of the Court*, Series C, No. 3, vol. iii. tome ii. p. 953.

[4] See, however, the next case, pp. 190-198 *infra*.

lands before December 1, and urgently requested the League to take measures for their protection.[1]

The Secretary-General, proceeding under a resolution of the Council of June 27, 1921,[2] relating to the protection of minorities, at once acquainted the representative of Poland at Geneva with the contents of the telegram and also advised the Members of the Council.[3] Acting in conformity with a resolution of the Council of October 25, 1920,[4] the President of the Council, M. Hymans, representative of Belgium, invited the Marquis Imperiali, representative of Italy, and the Viscount Ishii, representative of Japan, to join him in the examination of the question. The Committee thus constituted examined the subject on the basis of information furnished by the representative of Poland at Geneva as well as by the "German League" above mentioned, and on January 23, 1922, made a preliminary report advising that the Polish Government be asked to suspend all measures which might in any way affect the situation of the colonists, until the Council should have had the opportunity of considering the further observations of the Polish Government.[5] Various additional postponements of the measures in question were subsequently requested and promised, while the Council through Committees appointed for the purpose continued its consideration of the subject.

Further information was obtained from the Polish Government and from representatives of the settlers, but no solution having been arrived at by the Council, it decided, on September 9, 1922, to submit the legal questions involved to a Committee of Jurists, consisting

[1] See *Publications of the Court*, Series B, No. 6, p. 16; Series C, No. 3, vol. iii. tome i. p. 8.

[2] For this resolution see *League of Nations Journal*, 2nd year, No. 7, pp. 749-750. See also footnote [4] below.

[3] See *Publications of the Court*, Series B, No. 6, p. 17.

[4] For this resolution, see *League of Nations Official Journal*, 1st year, No. 8 (Nov.-Dec. 1920), pp. 8-9. This resolution, together with that of June 27, 1921, contains important provisions in regard to the manner in which the Council's duties for the protection of minorities are to be carried out.

[5] See *Publications of the Court*, Series B, No. 6, p. 17.

of M. Botella, Spain; M. Fromageot, France; Sir Cecil Hurst, Great Britain; and M. van Hamel, of the League Secretariat.[1] The conclusions of this committee did not, however, result in settling the controversy,[2] and, ultimately, on February 3, 1923, the Council adopted a resolution referring the whole matter to the Court.[3] This resolution was in the following terms:

"The Council of the League of Nations having been apprised of certain questions regarding the following facts:

"(*a*) A number of colonists who were formerly German nationals, and who are now domiciled in Polish territory previously belonging to Germany, have acquired Polish nationality, particularly in virtue of Article 91 of the Treaty of Versailles. They are occupying their holdings under contracts (*Rentengutsverträge*) which, although concluded with the German Colonization Commission prior to the Armistice of November 11, 1918, did not receive an "Auflassung" before that date. The Polish Government regards itself as the legitimate owner of these holdings under Article 256 of the Treaty of Versailles, and considers itself entitled to cancel the above contracts. In consequence, the Polish authorities have taken certain measures in regard to these colonists by which the latter will be expelled from the holdings which they occupy.

"(*b*) The Polish authorities will not recognize leases conceded before November 11, 1918, by the German Government to German nationals who have now become Polish subjects. These are leases over German State properties which have subsequently been transferred to the Polish State in virtue of the Treaty of Versailles, in particular of Article 256.

"Requests the Permanent Court of International Justice to give an advisory opinion on the following questions:

"(1) Do the points referred to in (*a*) and (*b*) above involve international obligations of the kind contemplated by the Treaty between the United States of America, the British Empire, France, Italy, Japan and Poland, signed at Versailles on June 28, 1919 [the Minorities Treaty],

[1] See *Publications of the Court*, Series B, No. 6, pp. 17-18.

[2] See *ibid.* p. 18.

[3] See *ibid.* p. 6; for proceedings of the Council deciding on this course, see *Publications of the Court*, Series C, No. 3, vol. iii. tome i. pp. 291-293.

and do these points come within the competence of the League of Nations as defined in that Treaty ? [1]

"(2) Should the first question be answered in the affirmative, the Council requests the Court to give an advisory opinion on the question whether the position adopted by the Polish Government and referred to in (*a*) and (*b*) above is in conformity with its international obligations.

"The Secretary-General is authorized to submit this request to the Court, together with all the relevant documents, to explain to the Court the action taken by the Council in this matter, to give all necessary assistance in the examination of the question and, if required, to take steps to be represented before the Court." [2]

It should here be noted that the Council subsequently informed the Court that paragraph (*b*) of the above resolution refers exclusively to the case of a special category of colonist farmers, namely, those who occupy holdings in virtue of leases contracted before the Armistice and still unexpired, and who subsequently obtained after the Armistice *Rentengutsverträge* for these holdings.[3]

The usual procedure was followed in transmitting the request for opinion to the Court and giving notice to the Members of the League and States mentioned in the Annex to the Covenant.[4] Furthermore, the Registrar, on the instructions of the President of the Court, notified the German Government of the request and resolution.[5] The Polish Government in a letter to the Registrar expressed the desire that its representatives should be heard by the Court and this was agreed to.[6] The Registrar also informed the German Government that the Court was prepared to hear their representative.[7]

On August 2, 1923, the oral proceedings commenced at the Peace Palace and continued for six days.[8] Professor Count Rostworowski first addressed the Court (in

[1] See pp. 175-176 *supra*.

[2] See *Publications of the Court*, Series B, No. 6, pp. 6-7.

[3] See *ibid.* pp. 8-9.

[4] See *ibid.* p. 9.

[5] See *ibid.* Series C, No. 3, vol. iii. tome ii. p. 1040. See also p. 124 *supra*.

[6] See *ibid.* pp. 1043-1044, 1047.

[7] See *ibid.* p. 1053.

[8] See *ibid.* vol. i. pp. 25-35.

French) on behalf of the Polish Government, confining his observations to question (1) in the Council's resolution.[1] The Right Hon. Sir Ernest M. Pollock, K.C., followed (in English) on the same side and dealt with the facts, viz., question (2).[2] M. Schiffer spoke (in German) on behalf of the German Government,[3] Count Rostworowski[4] and Sir Ernest Pollock replied,[5] and M. Schiffer rejoined.[6] In addition to these speeches, the Court had before it a great mass of documents bearing upon the points in issue.[7]

The contentions of the Polish Government that the case did not come within the competence (or jurisdiction) of the League fell under three main heads: (1) Procedure. It was said that Article 12 of the Minorities Treaty[8] does not enable the Council to take seizin of a minorities question at the instance of a private association, such as the "German League," and, further, that it is not sufficient for a Committee of the Council to deal with such a question and report upon it to the Council, but that a State which is a Member of the Council must, as a State and on its own responsibility, take the initiative. (2) Nature of the Polish Law of July 14, 1920. It was argued that a measure general in its terms and not containing any provision discriminating between the members of a minority and the majority, could not constitute an "infraction" or a "danger of infraction" of the Minorities' obligations within the meaning of Article 12.[9] (3) It was contended that the measures taken by Poland flowed from the rights conferred upon her by the Treaty

[1] The speech is set out in *Publications of the Court*, Series C, No. 3, vol. i. pp. 419-495.

[2] See *ibid.* pp. 496-592. It is believed that this is the first occasion on which members of the English Bar have been retained to represent a foreign government before an international Court. Sir Ernest Pollock was assisted by the Author.

[3] *Ibid.* pp. 592-693.

[4] *Ibid.* pp. 693-700.

[5] *Ibid.* pp. 700-719.

[6] *Ibid.* pp. 719-748.

[7] A list of these documents is given in Series B, No. 6, pp. 9-13, and they are set out in Series C, No. 3, vol. iii.

[8] See pp. 175-176 *supra*.

[9] See pp. 175-176 *supra*.

of Versailles, and that the interpretation of this Treaty was not within the jurisdiction of the League.

On the merits, the case presented to the Court on behalf of the Polish Government at the hearing was based primarily on the doctrine of State Succession. Briefly stated the argument may be summarized as follows: (1) Poland succeeded to Prussia as the sovereign of the territory. *Primâ facie*, international law may require that the successor State should respect the private rights of the inhabitants, but there is an exception where such private rights are related to a political system hostile to the successor. Here the Colonisation system was admittedly hostile to Poland and it was urged that the private rights of the settlers in regard to their land were conditional upon the fulfilment by them of their political purpose and the observance of their political obligations. Therefore, Poland was entitled to annul those rights which the rules of international law itself did not recognize as subsisting. (2) All acts of the German or Prussian Governments after the Armistice, whether granting the *Auflassung* to holders of *Rentengutsverträge*, or granting a *Rentengutsvertrag* to holders of *Pachtverträge*, were void. Under the *Rentengutsvertrag* before *Auflassung* as well as under the *Pachtvertrag* the colonist had no right *in rem*, but merely a contractual right conditional upon the performance of his political duties, and unenforceable against the State. Therefore, even if the Polish State was regarded as succeeding to the legal position of the Prussian State, it was open to it to annul the contracts, and agreeable to international law, inasmuch as the contracts were hostile to Poland.

The German representative affirmed the jurisdiction of the League under the Minorities Treaty, and, on the facts, contended that the settlers possessed perfect and enforceable rights of a private nature under German law even before the grant of *Auflassung*. Further, he disputed that the terms of Armistice had the effect contended for on behalf of Poland.

The Opinion was delivered on September 10, 1923,

when the Court unanimously answered question (1) in the affirmative and question (2) in the negative.[1]

On the matter of competence (question (1)) the Court, in interpreting Article 12 of the Minorities Treaty, stated that it was not material to inquire how or by whom the Member or Members of the Council may have been induced to bring the minorities question to the Council's attention. It is impossible to say that the present matter was not brought to the attention of the Council by any of its Members in accordance with Article 12 of the Treaty, inasmuch as it was brought to its attention by a report presented by three of its Members, and it does not matter that these Members were members of a committee formed under the Resolution of the Council of October 25, 1920,[2] to facilitate the performance by the Council of its duties in minorities matters. It is for the Council to regulate its procedure.[3] Moreover, the matter having been brought to the attention of the Council, it may at once proceed to "take such action and give such direction as it may deem proper and effective in the circumstances."[4] This stipulation clearly makes it proper for the Council to exercise its power under Article 14 of the Covenant to request the advice of the Court on points of law upon the determination of which its action may depend.[5]

"In connection with the power of the Council, in the performance of its functions under para. 2 of Article 12 of the Minorities Treaty,[6] to refer the present matter to the Court for an advisory opinion, the Court does not deem it necessary to interpret paragraph 3 of Article 12[6] by which Poland consents that any difference of opinion as to questions of law or fact arising out of the preceding Articles of the treaty may be brought before the Court by any one of certain Powers for final decision as a dispute of an international

[1] See *Publications of the Court*, Series B, No. 6. The Court consisted of MM. Loder, Weiss, Lord Finlay, MM. Nyholm, Moore, de Bustamente, Altamira, Oda, Anzilotti, Huber and Wang.

[2] See p. 179 *supra*.

[3] See *Publications of the Court*, Series B, No. 6, p. 22.

[4] See Minorities Treaty, Art. 12, pp. 175-176 *supra*.

[5] See *Publications of the Court*, Series B, No. 6, p. 22.

[6] Set out at pp. 175-176 *supra*.

character. Paragraph 3 by its very terms supplements paragraph 2, but is not in any sense a substitute for it ; and the fact that a question brought before the Court by the Council under paragraph 2 might conceivably be brought before the Court by a single Power as an international difference under paragraph 3, cannot be accepted as a reason for preventing the Council from discharging its duties under paragraph 2. The possible range of paragraph 3, so far as concerns the nature of the questions embraced in it, may be as great as that of paragraph 2. If the Court should refuse to take cognizance of a question presented under either paragraph, on the ground that it conceivably might have been or might be presented in a different way under the other, the result might be to make both paragraphs practically ineffective." [1]

"So far as concerns the question of competency" (the Opinion proceeds), "a further question remains to be considered, and that is whether there is in the present case any infraction or danger of infraction of any of the obligations included under Article 12. While under the terms of the Minorities Treaty it necessarily rests with the Council in the first instance to determine whether an infraction or danger of infraction exists, the Court is of opinion that upon the facts before it the existence of such a condition clearly appears. As has been seen, Article 7 of the Treaty provides that all Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion. The expression 'civil rights' in the Treaty must include rights acquired under a contract for the possession or use of property, whether such property be immoveable or moveable. Article 8 of the Treaty guarantees to racial minorities the same treatment and security 'in law and in fact' as to other Polish nationals. The facts that no racial discrimination appears in the text of the law of July 14, 1920,[2] and that in a few instances the law applies to non-German Polish nationals who took as purchasers from original holders of German race, make no substantial difference. Article 8 is designed to meet precisely such complaints as are made in the present case. There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law. . . . The outstanding fundamental point in the present case is the fact that the persons whose rights are now in question are as a class persons of the German race who settled on the lands in question under the Prussian law of 1886 and subsequent legislative acts, under contracts made with the Prussian State. Indeed, it is for this very

[1] *Publications of the Court*, Series B, No. 6, pp. 22-23.

[2] See pp. 177-178 *supra*.

reason that Poland contends that the contracts now under consideration are to be held invalid. Hence, although the law [*i.e.* the Polish Law of July 14, 1920] does not expressly declare that the persons who are to be ousted from the lands are persons of the German race, the inference that they are so is to be drawn even from the terms of the law. This is also clearly established as a fact by the proofs before the Court. It undoubtedly is true, as Poland has stated, that the persons whose rights are involved were settled upon the lands in pursuance of a policy of Germanization which appears upon the face of the legislation under which the contracts were made. The effect of the enforcement of the law of July 14, 1920, would be to eradicate what had previously been done, so far as de-Germanization would result from requiring the settlers in question to abandon their homes. But, although such a measure may be comprehensible, it is precisely what the Minorities Treaty was intended to prevent. The intention of this Treaty was no doubt to eliminate a dangerous source of oppression, recrimination and dispute, to prevent racial and religious hatreds from having free play and to protect the situations established upon its conclusion, by placing existing minorities under the impartial protection of the League of Nations." [1]

The Court then considers the Polish contention that the action taken against the settlers was based upon the Treaty of Versailles and that the interpretation of this treaty does not belong to the Council of the League when acting under the Minorities Treaty. This contention is rejected, because the main object of the Minorities Treaty is to assure respect for the rights of minorities and prevent discrimination against them by the Polish State. It does not matter whether the rights the infraction of which is alleged are derived from a legislative, judicial or administrative Act, or from an international engagement. It is essential that the Council should be competent incidentally to consider and interpret the laws or treaties on which the rights claimed to be infringed are dependent.[2]

The Opinion then turns to the merits, and first of all lays down that the date of the Armistice has no decisive importance. The cession and occupation of the German

[1] See *Publications of the Court*, Series B, No. 6, pp. 23-25.

[2] See *ibid.* p. 25.

territories transferred to Poland were effected by the coming into force of the Treaty of Versailles (January 10, 1920). The German Government and Prussian State must be considered as having continued to be competent to undertake transactions falling within the normal administration of the country until that date.[1]

Dealing with the nature of the *Rentengutsvertrag*, the Court finds that this was a valid and enforceable contract for the ownership of land under German law, which is still in force in the territories in question. Further, there was no arbitrary right in the State to refuse the *Auflassung*: the grant of *Auflassung* may be enforced by legal proceedings. In the Opinion of the Court it was clear that the purchaser had rights to the land even before *Auflassung*. He gave valuable consideration in money and cultivation for the acquisition of this interest, and it was an interest recognized by law and which might be safeguarded by legal proceedings. The purchaser acquired a *jus ad rem*, and after *Auflassung* had a *jus in re*.[2]

"The fact that there was a political purpose behind the colonisation scheme cannot affect the private rights acquired under the law."[3]

As to the question of State succession, the Court said that the principal question with which it was confronted was this:

"The sovereignty and the ownership of State property having changed, is the settler who had concluded a *Rentengutsvertrag* with the Prussian State entitled to claim from the Polish Government as the new owner the execution of the contract, including the completion of the transfer by *Auflassung*?"[4]

The Court rejects the Polish contentions as to the effect of succession upon this contract.

"The general question whether and under what circumstances a State may modify or cancel private rights by its sovereign legislative power, requires no consideration here. The Court is here dealing with private rights under specific provisions of law and of treaty, and it suffices for the purposes of the present opinion to say

[1] See *ibid.* pp. 26-28.
[2] See *ibid.* pp. 29-34.
[3] See *ibid.* p. 33.
[4] See *ibid.* p. 35.

that even those who contest the existence in international law of a general principle of State Succession do not go so far as to maintain that private rights, including those acquired from the State as the owner of the property, are invalid as against a successor in sovereignty. By the Minorities Treaty Poland has agreed that all Polish nationals shall enjoy the same civil and political rights and the same treatment and security in law as well as in fact. The action taken by the Polish authorities under the Law of July 14, 1920, . . . is undoubtedly a virtual annulment of the rights which the settlers acquired under their contracts and therefore an infraction of the obligation concerning their civil rights. It is contrary to the principle of equality, in that it subjects the settlers to a discriminating and injurious treatment to which other citizens holding contracts of sale or lease are not subject." [1]

The Opinion proceeds to examine various provisions of the Treaty of Versailles cited by the Polish Government and finds that they are not inconsistent with the above conclusions.[2] The argument based upon the mixed private and public character of the contracts is also held to fail, because the political motive originally connected with the *Rentengutsverträge* does not in any way deprive them of their character as contracts under civil law, and the few clauses which they contain of a distinctively political character become inoperative without interfering in the least with the normal execution of their essential clauses.[3]

The Court dealt with the *Pachtverträge* (or leases) on the same lines and held that they were not affected by the transfer of sovereignty and remained in force unless they had expired or had been legally superseded by *Rentengutsverträge*.[4] In regard to the colonists who on November 11, 1918, occupied their farms under *Pachtverträge* and subsequently obtained *Rentengutsverträge* from the Prussian Government, the Court was of opinion that they could not properly be evicted. The Prussian State was not precluded from granting the *Rentengutsvertrag* during the Armistice period. The new contract was, therefore, good and must be respected.[5]

[1] See *Publications of the Court*, Series B, No. 6, pp. 35-37.
[2] *Ibid.* pp. 37-39.
[3] *Ibid.* p. 39.
[4] See *Ibid.* pp. 40-42.
[5] See *ibid.* pp. 42 and 43.

For all these reasons the Court held: (1) That the points referred to in (*a*) and (*b*) of the Council's Resolution of February 3, 1923, did involve international obligations of the kind contemplated by the Minorities Treaty, and that these points came within the competence of the League of Nations. (2) That the position adopted by the Polish Government was not in conformity with its international obligations.[1]

This case, which involved by far the most complex questions of law yet brought before the Court, is of special importance by reason of its subject-matter. As has been noticed in an earlier chapter,[2] treaties for the protection of minorities in similar terms to the Polish Treaty, have been entered into by a number of other States, and the principles laid down by the Court in this case cannot fail to influence the interpretation and application of their provisions.

The Opinion came before the Council of the League of Nations for action at public meetings held on September 27, 1923,[3] and December 17, 1923.[4] On the latter date the Council adopted a resolution stating:

(1) That it considers that the question of the colonists can only be settled on the basis of the Court's Advisory Opinion. (2) That since it appears impossible for practical reasons to re-establish in their properties the settlers who have been already expelled, which would be, strictly speaking, the proper course, these settlers should receive from the Polish Government just compensation for the losses which they have suffered as the result of the fact that they have not been left in undisturbed possession of such properties. (3) The Council hopes that the Polish Government may be willing to formulate proposals on the basis indicated above. In the meanwhile the Council notes the assurance given by the representative of Poland to the effect that in every case where expulsion has not been carried out prior to the present date, the judgments of the Polish Tribunals providing for expulsion will not be executed. (4) In order to enable the Council to discharge completely its duty towards the persons belonging to the minority in question, it invites

[1] See *ibid.* p. 43.

[2] See pp. 72-74 *supra.*

[3] See *League of Nations Official Journal*, 4th year, No. 11, p. 1333 (Minute 1081), and p. 1489.

[4] See *ibid.* 5th year, No. 2, p. 359 (Minute 1140), and pp. 406-408.

its Committee—the representatives of Brazil, Great Britain and Italy—to continue to deal with the matter and to present a further report to the Council at its next meeting.[1]

The question has since been settled on the basis outlined in this resolution.

Advisory Opinion as to the Acquisition of Polish Nationality.

This case (the fourth and last considered by the Court at its third session) is related to the preceding one of the German settlers.[2] The matter was first brought to the knowledge of the League of Nations by a petition of the same "German League for the Protection of the Rights of Minorities in Poland,"[3] dated November 12, 1921.[4] In this document, which dealt also with the question of the settlers and other matters, complaint was made of the manner in which the Polish Government were interpreting and applying the provisions relating to the acquisition of Polish nationality by the German natives and inhabitants of the country, which are contained in the Treaty of Versailles and the Minorities Treaty.[5] So far as material for the purposes of the present case the particular provision relied upon was Article 4 of the Minorities Treaty,[6] the first paragraph of which runs as follows:

"Poland admits and declares to be Polish nationals *ipso facto* and without the requirement of any formality persons of German, Austrian, Hungarian or Russian nationality who were born in the said territory [*i.e.* the territory transferred to Poland] of parents habitually resident there, even if at the date of the coming into force of the present treaty they are not themselves habitually resident there."

The Polish Government interpreted this provision as entitling it not to recognize German nationals as acquiring

[1] See *League of Nations Official Journal*, 5th year, No. 2, pp. 360-361.

[2] See pp. 175-190 *supra*.

[3] See p. 178 *supra*.

[4] See *Publications of the Court*, Series C, No. 3, vol. iii. tome i. pp. 55-58.

[5] *Ibid.*

[6] See p. 180 *supra* for the full title of this Treaty.

Polish nationality if their parents were not habitually resident in what was now Polish territory both on the date of birth of the person concerned and on the date of the entry into force of the treaty.[1] It followed from this position that certain rights which the Minorities Treaty guaranteed to Polish nationals belonging to the German minority,[2] were not regarded by the Polish Government as applicable to persons who did not fulfil the above conditions.

The issues raised were dealt with by the Council of the League in the same way as the matter of the German settlers,[3] and were ultimately referred to the Court under the following Resolution adopted on July 7, 1923:

"The Council of the League of Nations having received notice of the following question:

"The Polish Government has decided to treat certain persons, who were formerly German nationals, as not having acquired Polish nationality and as continuing to possess German nationality, which exposes them in Poland to the treatment laid down for persons of non-Polish nationality and in particular of German nationality;

"On the one hand, on the ground that these persons were born in the territory which is now part of Poland, their parents having been habitually resident there at the date of their birth, it is maintained that in virtue of Article 4, paragraph 1, of the Treaty of June 28, 1919, between the Principal Allied and Associated Powers and Poland [the 'Minorities' Treaty], they are *ipso facto* Polish nationals, and consequently enjoy all the rights and guarantees granted by the provisions of the said Treaty to Polish nationals belonging to racial, religious or linguistic minorities;

"On the other hand, the Polish Government considers itself entitled not to recognize these persons as Polish nationals, if their parents were not habitually resident in the above-mentioned territory both on the date of birth of the person concerned and on the date of the entry into force of the above-mentioned Treaty, namely January 10, 1920

[1] See *Publications of the Court*, Series B, No. 7, pp. 6 and 7.

[2] See p. 175 *supra*.

[3] See pp. 179-180 *supra*, and *Publications of the Court*, Series B, No. 7, pp. 10-12.

It is consequently maintained that these persons cannot legally enjoy the guarantees granted by the Treaty ;

" Requests the Permanent Court of International Justice to give its Advisory Opinion, if possible during the present session, on the following questions :

" (1) Does the question regarding the position of the above-mentioned persons, in so far as they may belong to racial or linguistic minorities, arising out of the application by Poland of Article 4 of the Treaty of June 28, 1919, between the Principal Allied and Associated Powers and Poland, fall within the competence of the League of Nations under the terms of the said Treaty ?

" (2) If so, does Article 4 of the above-mentioned Treaty refer solely to the habitual residence of the parents at the date of birth of the persons concerned, or does it also require the parents to have been habitually resident at the moment when the Treaty came into force ? " [1]

On July 11, 1923, the Secretary-General of the League submitted the request for opinion to the Court,[2] and the usual notification thereof was given to the Members of the League and the States mentioned in the Annex to the Covenant. The Registrar, as in the preceding case, was also instructed to notify the German Government.[3] The Polish Government and the German Government expressed the desire to be heard by the Court [4] and appointed representatives for this purpose.[5] On August 23, 1923, the Roumanian Government also informed the Court that as the first question might interest Roumania, that Government wished to be in a position to expose its point of view.[6] The Court fixed September 3 for hearing the Roumanian representative, but the Roumanian Government asked for more time and it was found

[1] See *Publications of the Court*, Series B, No. 7, pp. 6 and 7. The Resolution winds up with the usual directions to the Secretary-General. See other Resolutions set out at pp. 158-159, 181 *supra*.

[2] *Ibid.* pp. 7 and 8.

[3] See *ibid.* p. 8.

[4] See *Publications of the Court*, Series C, No. 3, vol. iii. tome ii. pp. 1086, 1092.

[5] See *ibid.* pp. 1088-1089, 1097.

[6] See *ibid.* p. 1089. Roumania is party to a similar treaty for the protection of minorities.

impossible to grant this request owing to the completion of the Court's agenda being imminent and to the desire of the Council of the League, expressed in the Resolution, that the Opinion should be given during the current session of the Court.[1]

The Polish representative, Count Rostworowski, addressed the Court on August 27, 1923,[2] and the German representative, M. Schiffer, on September 3.[3] On September 4, Count Rostworowski replied[4] and M. Schiffer made a speech in rejoinder.[5]

The Opinion of the Court[6] was delivered on September 15, 1923, the unanimous conclusion being :

"(1) That the position of the persons contemplated in the Council's Resolution, arising out of the application by Poland of Article 4 of the Minorities Treaty, did fall within the competence of the League of Nations under the terms of the said Treaty ;

"(2) That Article 4 of the Treaty refers only to the habitual residence of the parents at the date of birth of the persons concerned."[7]

The Opinion deals in the first place with the question of competence or jurisdiction, which, as has been seen from the preceding cases, has been repeatedly raised as a preliminary objection to the intervention of the League of Nations. In regard to minorities, the jurisdiction of the League depends upon Article 12 of the Treaty and in particular upon the words :

" Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations."[8]

[1] See *Publications of the Court*, Series C, No. 3, vol. iii. tome ii. pp. 1090, 1092, 1093 ; Series B, No. 7, p. 9 ; and p. 192 *supra*.

[2] See *ibid.* Series C, No. 3, vol. i. pp. 38-39, 753-783.

[3] See *ibid.* pp. 40, 783-825.

[4] See *ibid.* pp. 42, 827-834.

[5] See *ibid.* pp. 42-43, 834-843.

[6] The composition of the Court was the same as in the preceding case. See footnote 1, p. 184 *supra*.

[7] See *Publications of the Court*, Series B, No. 7, p. 21, and the Resolution of July 7, 1923, set out at pp. 191-192 *supra*.

[8] Art. 12 is set out in full on pp. 191-192 *supra*.

The contention of the Polish Government was that a "minority" within the meaning of this provision only comprehends persons possessing Polish nationality, and that inasmuch as the right of the persons in question in the present case to Polish nationality was the point in dispute, the jurisdiction of the League does not arise.[1] The Court, accordingly, examines the question of the meaning of the term "minority."

"In order to reply to this question" (the Opinion states) "it is necessary to bear in mind the conditions under which the Minorities Treaty was concluded and the relations existing between that Treaty and the Treaty of Peace [of Versailles] which was signed on the same day. The independence of the new State of Poland was finally recognized by the Treaty of Peace. At the same time Poland assumed certain obligations towards the Principal Allied and Associated Powers which were co-signatories with her of the Treaties of Peace and Minorities. According to Article 93 of the Treaty of Peace: 'Poland accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of the inhabitants of Poland who differ from the majority of the population in race, language or religion.' Again in the Preamble of the Minorities Treaty Poland declares that she desires 'to conform her institutions to the principles of liberty and justice, and to give a sure guarantee to the inhabitants of the territory over which she has assumed sovereignty.'" [2]

The Court points out that these two clauses which serve as a basis for the provisions embodied in the Minorities Treaty do not speak restrictively of Polish *nationals*, but, in the one instance of *inhabitants* generally, and in the other of *inhabitants who differ from the majority* of the population in race, language or religion. Thus it appears that the term "minority" includes inhabitants who differ from the majority of the population in race, etc., whether they are Polish nationals or not.[3] This conclusion is confirmed by Article 2 of the Minorities Treaty whereby Poland undertakes to assure full pro-

[1] See *Publications of the Court*, Series B, No. 7, pp. 12-13.
[2] See *ibid.* pp. 13-14.
[3] See *ibid*, pp. 14-15.

tection of life and liberty to all inhabitants without distinction of birth, *nationality*, language, race or religion. Moreover, Article 12 itself is in accordance with the wider conception of a minority, since it speaks of "persons belonging to racial, religious or linguistic minorities" without attaching any importance to the political allegiance of these persons.[1]

The Court observes that one of the first problems which presented itself in connection with the protection of minorities was that of preventing the States concerned from refusing their nationality on racial, religious or linguistic grounds to certain categories of persons linked to the territory allocated to such States. That is why the Minorities Treaties include provisions relating to the acquisition of nationality.

"Though, generally speaking, it is true that a sovereign State has the right to decide what persons shall be regarded as its nationals, it is no less true that this principle is applicable only subject to the Treaty obligations referred to above."[2]

"The very fact that Articles 3 to 6 [which relate to nationality] are included in the Minorities Treaty seems to show that, in so far as these Articles establish a right on the part of persons of German origin to Polish nationality, this right is placed under the guarantee of the League of Nations, which is specially fitted to undertake the protection of the persons of German origin referred to in the Minorities Treaty, to which Germany was not a signatory. It seems therefore evident that since the Minorities Treaty in general and Article 4[3] in particular does not exclusively contemplate minorities composed of Polish nationals or of inhabitants of Polish territory,[4] Poland by consenting, in Article 12 of the Treaty, to the preceding Articles being placed under the guarantee of the League of Nations in so far as they concern persons belonging to racial or linguistic minorities, also consents to the extension of this protection to the application of Articles 3 to 6."[5]

[1] See *Publications of the Court*, Series B, No. 7, p. 15.

[2] *Ibid.* pp. 15-16. Cf. with the passage cited above the *Tunis and Morocco* case, at p. 152 *supra*.

[3] See p. 190 *supra*.

[4] The provisions of Art. 4 (set out at p. 190 *supra*) clearly extend to persons born in the territory but not resident there at the date of the Treaty.

[5] See *Publications of the Court*, Series B, No. 7, p. 16.

Turning to the second question referred to the Court,[1] the Opinion dismisses the contention that Article 4 requires habitual residence by the parents at the date of the coming into force of the Treaty.

"Such an assertion is in contradiction with the terms of the provision which it claims to interpret and is not supported by the precedents supplied by international practice."

It is pointed out that to require the continuance or re-establishment of habitual residence by the parents at the time of the entry into force of the Treaty would amount to an addition to the text of Article 4. Moreover, such a requirement is not justified by any valid reason and leads to manifest absurdities. The choice lay between the two systems which in various forms and combinations have always been adopted when territory has been annexed or ceded: the principle of habitual residence, and the principle of origin. The Treaty has combined the two systems. Article 3 gives Polish nationality to all German nationals habitually resident in the territories incorporated in Poland. Article 4 gives the same nationality to persons born in these territories, *i.e.* originating from those territories,—provided they are born of parents habitually resident there. The purpose of the condition as to the parents' residence is to exclude births on the soil due to accidental circumstances, such as a casual visit, and to create a moral link between the child and his birth-place strengthening and supplementing the natural bond already created by the fact of his birth.[2]

"To require in addition that the parents should have renewed or preserved their habitual residence in the ceded territories at the time when the Treaty of Minorities came into force would be to lay down a useless condition not to be found in any Treaty of annexation hitherto concluded." [3]

Most of these individuals have attained an independent existence and a home of their own. They need not,

[1] See p. 192 *supra*.

[2] See *Publications of the Court*, Series B, No. 7, pp. 17-18.

[3] *Ibid.* p. 19.

under the terms of Article 4 be themselves resident in order to acquire the new nationality; so why require the parents to be resident? Again, what if the parents are dead?[1] The Court sums up its conclusions upon this point in these words:

"It is necessary, but on the other hand sufficient, that on the date of birth the parents should have been habitually resident, that is to say, should have been established in a permanent manner, with the intention of remaining, in the territory which subsequently became incorporated in Poland. To impose an additional condition for the acquisition of Polish nationality, a condition not provided for in the Treaty of June 28, 1919, would be equivalent, not to interpreting the Treaty, but to reconstructing it."[2]

Attached to the Advisory Opinion are some additional observations by Lord Finlay on the question of competency,[3] interesting not only by reason of their intrinsic value but also as marking a novelty in the Court's procedure, Lord Finlay not dissenting in any way from the Court's conclusions. He points out that the present case belongs to a large class of cases in which the decision on competency and the decision on the merits both depend on the finding to be arrived at on some one point of law or fact. The question of competency is in its nature preliminary, but if it depends on a point which is also decisive of the merits both questions may most properly be considered together. In this case the one vital question was whether Article 4 requires domicile of the parents on Polish territory at the time of birth only, or also at the time when the Treaty came into effect. The Court holds that domicile at the date of birth is all that is required. It follows that the Polish contention is wrong on the merits and also on the question of competency. The persons became Polish nationals *ipso facto*, and the withholding of their rights as nationals was a wrong to them as members of the German minority in the aggregate of Polish nationals.[4]

[1] See *Publications of the Court*, Series, B, No. 7, pp. 19-20.
[2] *Ibid.* p. 20.
[3] *Ibid.* pp. 21-26.
[4] *Ibid.* pp. 22-23.

The Opinion of the Court was dealt with by the Council of the League at public meetings held on September 27, 1923,[1] and December 14, 1923.[2] The Council adopted the Opinion and invited one of its members to offer his good offices to the Polish Government for further examination of the question of the application of the Polish nationality clauses, and for such negotiations as the Polish Government might desire to enter into with the German Government on the subject.

The Polish Government expressed its willingness to take part in the negotiations referred to and it is believed that as a result a satisfactory settlement has now been arrived at.

Advisory Opinion regarding the Delimitation of the Polish-Czechoslovakian Frontier.

This case was considered at the fourth (extraordinary) session of the Court specially summoned for the purpose on November 12, 1923. It arose out of a complicated and protracted dispute between Poland and Czechoslovakia, going back to the time of their establishment as independent States, in regard to the line of their common frontier in three districts : the former Duchy of Teschen, and the regions of Spisz and Orava.[3]

The task of ensuring the recognition of the frontiers of the new States and of settling disputes which might arise between them was undertaken by the Principal Allied and Associated Powers, represented in the Supreme Council, in pursuance of the powers conferred upon them by the Peace Treaties. On September 27, 1919, the Supreme Council decided that the allocation of these districts should be settled by a plebiscite. This plebiscite, however, did not take place and the Polish and Czechoslovak Governments agreed on July 10, 1920, to accept

[1] See *League of Nations Official Journal*, 4th year, No. 11, pp. 1333-1335 (Minute 1082), and pp. 1489-1490.

[2] See *ibid.* 5th year, No. 2, p. 351 (Minute 1130), and pp. 405-406.

[3] The statement of the facts given in the text is based upon that contained in the Advisory Opinion, *Publications of the Court*, Series B, No. 8, at pp. 1-26.

a settlement of the dispute by the Principal Allied and Associated Powers. The Supreme Council then instructed the Conference of Ambassadors to divide the three territories and on July 28, 1920, the Conference took a decision on this subject and set up a Delimitation Commission, the powers of which it defined. The issues in the case depended mainly upon the effect and interpretation of this decision.

Poland considered that the line indicated by the decision as regards the district of Spisz, and in particular the commune of Jaworzina, was contrary to the principles of justice and equity, and formulated proposals for its modification. These proposals were on July 5, 1921, transmitted to the Conference of Ambassadors and on December 2, 1921, that body took a further decision which, in the opinion of the Czechoslovak Government finally confirmed the frontier indicated in the previous decision, whereas, in the opinion of the Polish Government, this decision did not close the door to the possibility of modifying the frontier as desired by Poland. Attempts to fix a line acceptable to both parties by means of mutual agreement failed and the question once more came before the Conference of Ambassadors on September 26, 1922. The further efforts there made to settle the dispute having proved unavailing, the members of the Conference as representatives of the Principal Allied Powers on July 27, 1923, adopted a resolution whereby it was decided that the difficulties in question should be laid before the Council of the League of Nations in pursuance of Article 11, paragraph 2, of the Covenant.[1] The resolution added that the Governments of France, Great Britain, Italy and Japan would have no objection should the Council see fit to ask the opinion of the Permanent Court of International Justice on the legal question involved.

The matter accordingly came before the Council, and with the consent of the Polish and Czechoslovak Governments it was decided to refer the dispute to the Court

[1] Set out at p. 231 *infra*.

for its Advisory Opinion, the Resolution giving effect to this decision being adopted on September 27, 1923. This Resolution, which is too long for reproduction here,[1] recites the facts, sets out the " Case of the Polish Government " and the " Case of the Czechoslovak Government," and in view of the conclusions formulated in the two cases requests the Court to give an advisory opinion on the following points :

" Is the question of the delimitation of the frontier between Poland and Czechoslovakia still open, and if so, to what extent ; or should it be considered as already settled by a definitive decision (subject to the customary procedure of marking boundaries locally, with any modifications of detail which that procedure may entail) ? "

The Council at the same time expressed the desire that, if possible, an extraordinary session of the Court should be convoked under Article 23 of the Statute,[2] in order to enable the Council to consider the advisory opinion at its next Session, on December 10, 1923. The President of the Court complied with this wish and summoned an extraordinary session for November 12. Notice was given to the Members of the Council as composed when the Resolution was adopted (*i.e.* including Poland and Czechoslovakia) that the Court had been so convoked.[3] Further, the request for advisory opinion was notified to the Members of the League and the States mentioned in the Annex to the Covenant.[4] At the request of the Polish and Czechoslovak Governments respectively, the Court heard at public sittings, held on November 13 and 14, oral statements by representatives of the two Governments,[5] and delivered its Opinion, which was unanimous, on December 6, 1923.[6]

The Opinion examines with care the events leading up

[1] The Resolution is set out in full in *Publications of the Court*, Series B, No. 8, pp. 6-11.

[2] See p. 245 *infra*.

[3] See *Publications of the Court*, Series B, No. 8, p. 19.

[4] See *ibid.* p. 11.

[5] See *ibid.* p. 15-16.

[6] See *Publications of the Court*, Series B, No. 8. The Court was composed as follows : MM. Loder, Weiss, Lord Finlay, MM. Nyholm, Oda, Anzilotti, Huber, Yovanovitch, Beichmann and Wang.

to the decision of the Conference of Ambassadors dated July 28, 1920, for the purpose of ascertaining how the frontier dispute was referred to that body for settlement and the scope of its powers.[1] The Court then refers to the decision itself and states that three questions must be considered in regard to it: (1) What is the nature and effect of the decision of July 28, 1920? (2) What is the frontier line as defined by this decision in the Spisz district? (3) Is this frontier line wholly or partly subject to modifications, and in what circumstances?[2] A further question, namely, whether the delimitation effected in the Teschen and Orava districts might, as the Polish Government maintained, depend upon the solution adopted as regards the Spisz territory, also arose for consideration.[3]

In regard to the first question, after reviewing the relevant facts the Court comes to the conclusion that over and above the authority possessed by a decision of the Principal Allied and Associated Powers in this case, two declarations dated July 10 and 28, 1920, signed by the representatives of Poland and Czechoslovakia, give to the decision the force of a contractual obligation entered into by the parties.[4]

As to the second and third questions, which involved complicated and highly technical points of little general interest, it seems sufficient to state that, in the result, the Court held that the frontier line had been, directly or indirectly, fixed in a definitive manner throughout the whole region of Spisz by the above-mentioned decision, but that under the terms of that decision itself certain modifications, in so far as the new dividing line described therein is concerned, were contemplated and permissible. Moreover, these modifications are not limited to mere deviations between fixed points required by topographical features, but extend to all such diversions of this portion of the frontier line as are consistent with the nature of a " modification " and do not involve a complete or almost

[1] See *ibid.* pp. 20-26.
[2] See *ibid.* pp. 26-28.
[3] See *ibid.* p. 28.
[4] See *ibid.* pp. 29-30.

complete abandonment of the line fixed by the decision of July 28, 1920.[1]

The Court deals with the further question referred to above, namely, whether the frontier line in Teschen and Orava was dependent upon the settlement of the Spisz frontier. Upon full consideration of the facts and documents bearing upon the point, the Court answers this question in the negative.[2]

The conclusions of the Court in answer to the question stated in the Council's resolution,[3] is in the following terms :

" The Court is of opinion that the question of the delimitation of the frontier between Poland and Czechoslovakia has been settled by the decision of the Conference of Ambassadors of July 28, 1920, which is definitive ;

" but that this decision must be applied in its entirety, and that consequently that portion of the frontier in the region of Spisz topographically described therein remains subject (apart from the modifications of detail which the customary procedure of marking boundaries locally may entail) to the modifications provided for under paragraph 3 of Article II of the same decision." [4]

The Opinion came before the Council of the League at public meetings held at Geneva in December 1923.[5] The Council unconditionally adopted the Opinion, and the representatives of Poland and Czechoslovakia expressed their loyal acceptance of it. After considerable discussion as to the precise application of the various points dealt with by the Court and to the actual delimitation of the frontier in question, the Council adopted a resolution containing directions as to the manner in which the Delimitation Commission should proceed to trace the frontier line in accordance with the Court's ruling. It is understood that a settlement of the dispute upon this basis has finally been reached.

[1] See *Publications of the Court*, Series B, No. 8, pp. 31-43. See also pp. 43-49, where a subsidiary point is dealt with.

[2] See *ibid.* pp. 50-57.

[3] See p. 200 *supra*.

[4] See *Publications of the Court*, Series B, No. 8, p. 57.

[5] See *League of Nations Official Journal*, 5th year, No. 2, pp. 345-348 (Minute 1126), pp. 356-358 (Minute 1139), and p. 364 (Minute 1144), and pp. 398-399.

The Mavrommatis Palestine Concessions.

This case, which with two others[1] was heard at the fifth (ordinary) session of the Court in the Summer of 1924, is the second contested case that has come before it. The matter arose out of certain concessions alleged to have been granted to M. Mavrommatis, a Greek, by the Turkish Government. The concessions in question fell into three groups: (1) relating to the construction and working of an electric tramway system, the supply of electric light and power and of drinking water in Jerusalem; (2) relating to similar undertakings at Jaffa; and (3) relating to irrigation works in the Jordan Valley. Of these concessions only (1) and (2) are material as the claim in respect of (3) was abandoned before the Court.[2]

It is to be observed that the Jerusalem concessions were granted before October 29, 1914 (the date of the outbreak of war between Turkey and the Allies), whereas the Jaffa concessions were not signed by the Ottoman authorities until January 28, 1916.[3]

When, as a result of the war, Palestine passed under the control of Great Britain, M. Mavrommatis claimed from the British Government the right to maintain and carry out the concessions or, failing that, compensation. In April 1921 he approached the British Government with a view to obtaining satisfaction in regard to his claims, and a protracted correspondence took place between his solicitors and representatives of the Government. At a later stage, officials of the Greek Legation in London intervened on M. Mavrommatis' behalf, and finally on May 13, 1924, the Greek Government filed with the Registry of the Court, in conformity with Article 40 of the Statute,[4] and Article 35 of the Rules of Court,[5] an application instituting proceedings and claiming the sum of £234,339, as compensation to M.

[1] See pp. 213, 216 *infra*.

[2] See *Publications of the Court*, Series A, No. 2, pp. 7 and 8.

[3] See *ibid.* pp. 27 and 28.

[4] See p. 250 *infra*.

[5] See p. 271 *infra*.

Mavrommatis in respect of the alleged wrongful refusal of the British Government to recognize the concessions. This application was based upon Article 9 of Protocol XII. annexed to the Treaty of Lausanne, and Articles 11 and 26 of the Mandate for Palestine conferred upon His Britannic Majesty on July 24, 1922, under which the Greek Government claimed that they were entitled to submit the matter to the Court without a special agreement of reference having been made with the British Government.[1] The application was in accordance with Article 40 of the Statute, communicated to the British Government on May 15, 1924, and on May 23, 1924, the Greek Government filed a Case, which was transmitted to the British Government on May 31. On June 3, that Government informed the Court that it found itself obliged to make a preliminary objection on the ground that the Court had no jurisdiction to entertain the proceedings, and on June 16 the Agent of the British Government filed with the Registry of the Court a Preliminary Objection and Preliminary Counter-case.[2] The Agent of the Greek Government requested permission, on behalf of his Government, to make a written reply, and this was accordingly presented on June 30.[3]

At public sittings held on July 15 and 16 the Court heard oral arguments by His Excellency M. Politis, Counsel for the Greek Government, and Sir Cecil Hurst, K.C.B., K.C., Agent for the British Government.[4] The Court was composed of the eleven judges,[5] with the addition of M. Caloyanni as Greek national judge, in view of the fact that the permanent membership of the Court does not include a Greek citizen.[6]

The only question before the Court was the preliminary one of jurisdiction; the proceedings were in the nature of a demurrer, upon which inquiry into the merits of the claim is excluded. As already indicated, the Greek

[1] See pp. 61-64, 97-98 *supra*.
[2] See *Publications of the Court*, Series A, No. 2, pp. 7 and 9.
[3] *Ibid.* p. 9.
[4] *Ibid.* p. 10.
[5] For list, see p. 281 *infra*.
[6] See pp. 47-50 *supra*.

Government relied upon the provisions of certain international instruments as giving the Court " compulsory " jurisdiction to entertain the case, under Article 36, para. 1, of the Statute.[1] The provisions in question were the following :

MANDATE FOR PALESTINE.

Article 26 :

" The Mandatory [*i.e.* Great Britain] agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations."

The provision of the Mandate which it was alleged the British Government had contravened was Article 11, which states, *inter alia*, that

" the administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, *subject to any international obligations accepted by the Mandatory*, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services or utilities established or to be established therein. . . ."

The point made under this provision was that the British Government (so it was alleged) had granted—or allowed the Palestinian authorities to grant—certain concessions to a Mr. Rutenberg, which (it was said) covered in part the same ground as the Mavrommatis concessions, and had thereby disregarded the " international obligations " referred to in the above Article.

In order to complete the summary of the international documents relied upon by the Greek Government, it is necessary to state that Protocol XII. of the Treaty of Lausanne provides in Article 9 for the subrogation of the States succeeding Turkey in territories detached from her in the matter of concessionary contracts entered into

[1] See pp. 61, 62-64 *supra*, and p. 249 *infra*.

before October 29, 1914, and, in other Articles, for the re-adaptation of such concessionary contracts, or their dissolution in return for compensation, according to whether they had or had not begun to be put into operation.

It will be seen that the source of the Court's jurisdiction in this case had to be sought in Article 26 of the Mandate, set out above, which lays down the conditions upon which disputes can be brought before the Court. These conditions are three in number and inasmuch as the matter in issue was whether or not they had been fulfilled they may conveniently be referred to in the form of questions :

(1) Was the dispute a dispute between the Mandatory and another Member of the League : in other words, a dispute between the two States, Great Britain and Greece ?

(2) If so, was it a dispute which could not be settled by negotiation ?

(3) Finally, if both these conditions were fulfilled, was it a dispute as to " the interpretation or application of the provisions of the Mandate " ?

The judgment of the Court was delivered on August 30, 1924, when by a majority of seven to five it was held that there was jurisdiction in respect of the Jerusalem concessions but not in respect of the Jaffa concessions, the dissenting judges, viz. : Lord Finlay, Mr. Moore, M. de Bustamente, Mr. Oda, and M. Pessoa, all being of opinion that there was no jurisdiction in either case.[1]

The judgment examines at the outset the first of the questions set out above ; it states that

" a dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The present suit between Great Britain and Greece certainly possesses these characteristics. The latter Power is asserting its own rights by claiming from His Britannic Majesty's Government an indemnity on the ground that M. Mavrommatis, one of its subjects, has been treated by the Palestine or British authorities in a manner incom-

[1] See *Publications of the Court*, Series A, No. 2. For the composition of the Court, see p. 204 *supra*.

patible with certain international obligations, which they were bound to observe. . . . It is true that the dispute was at first between a private person and a State—*i.e.* between M. Mavrommatis and Great Britain. Subsequently the Greek Government took up the case. The dispute then entered upon a new phase; it entered the domain of international law, and became a dispute which may or may not fall under the jurisdiction of the Permanent Court of International Justice.[1] . . . It is an elementary principle of international law that a State is entitled to protect its own subjects when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law." [2]

Dealing with the second question,[3] the Court refers to the very small number and brevity of the communications exchanged between the two Governments, but holds that "the question of the importance and chances of success of diplomatic negotiations is essentially a relative one." [4] Whilst no general and absolute rule can be laid down, the Court comes to the conclusion that in the present case the diplomatic negotiations must be regarded as the continuation of the correspondence between M. Mavrommatis and the British Government, and that, in all the circumstances, a deadlock had been reached which made it clear that the dispute could not be settled by diplomatic means.[5] At the same time the Court is careful to state that it "realises to the full the importance of the rule laying down that only disputes which cannot be settled by negotiation should be brought before it. It recognizes, in fact, that before a dispute can be made the subject of an action at law, its subject-matter should have been clearly defined by means of diplomatic negotiations." [6]

The judgment then proceeds to deal with the third

[1] *Ibid.* pp. 11-12. [2] *Ibid.* p. 12.

[3] See p. 206 *supra*.

[4] See *Publications of the Court*, Series A, No. 2, p. 13.

[5] See *ibid.* pp. 13-15. [6] *Ibid.* p. 15.

question.[1] In the first place, reference is made to the last paragraph of Article 36 of the Statute,[2] the Court stating that " the exact scope must be ascertained of the investigations which it must, under that paragraph, pursue in order to arrive at the conclusion that the dispute before it does or does not relate to the interpretation or the application of the Mandate, and, consequently, is or is not within its jurisdiction under the terms of Article 26 of the Mandate." [3]

" The Court, bearing in mind the fact that its jurisdiction is limited, that it is invariably based on the consent of the respondent and only exists in so far as this consent has been given, cannot content itself with the provisional conclusion that the dispute falls or not within the terms of the Mandate. The Court, before giving judgment on the merits of the case, will satisfy itself that the suit before it in the form in which it has been submitted and on the basis of the facts hitherto established, falls to be decided by application of the clauses of the Mandate. For the Mandatory has only accepted the Court's jurisdiction for such disputes. In this connection the Court distinguishes the present case from that of the *Tunis and Morocco Nationality Decrees*, where the objection to the general jurisdiction of the League of Nations was based upon a particular exception." [4]

Reference is then made to Article 11 of the Mandate.[5] That provision is submitted to a close examination in the course of which the French and English texts are compared, and the following general observation may be cited :

" The Court is of opinion that, when two versions possessing equal authority exist, one of which appears to have a wider bearing than the other, it is bound to adopt the more limited interpretation which can be made to harmonize with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties."

The precise meaning to be attributed to the expression

[1] See p. 206 *supra*.

[2] Set out at p. 249 *infra*. See also pp. 84-86 *supra*.

[3] *Publications of the Court*, Series A, No. 2, p. 16. See also p. 205 *supra*.

[4] *Ibid.* pp. 16 and 17 ; see also p. 153 *supra*.

[5] See p. 205 *supra*.

" public control " in Article 11[1] is discussed, and the Court comes to the conclusion that the Rutenberg concessions[2] constitute an application by the Administration of Palestine of the system of " public control " there referred to and consequently fall within the scope of the Article.[3] Therefore, the Court holds that inasmuch as the Rutenberg concessions overlap with the Mavrommatis concessions, the dispute relates to Article 11.[4]

The Greek Government contended that by granting the Rutenberg concessions without paying compensation to M. Mavrommatis, the Administration of Palestine had disregarded the international obligations of the Mandatory.

" At the present stage of the proceedings the question whether there really has been a breach of those obligations can clearly not be gone into ; to do so would involve a decision as to the responsibility of the respondent, a thing which the two Governments concerned do not at the moment ask the Court to do. But . . . the Court is constrained at once to ascertain whether the international obligations mentioned in Article 11 affect the merits of the case and whether any breach of them would involve a breach of the provisions of this Article." [5]

The judgment proceeds to consider what are the obligations contemplated by the words " subject to any international obligations accepted by the Mandatory "[6] in Article 11. The Court rejects the view, put forward by the Greek Government, that all international obligations in general are referred to. In the Court's opinion the international obligations mentioned in Article 11 are *contractual* obligations only, which have some relation to the powers granted to the Palestine Administration under the same Article.[7] Such contractual obligations are to be found in Protocol XII. of the Treaty of Lausanne,[8]

[1] See p. 205 *supra*.
[2] See p. 205 *supra*.
[3] See p. 205 *supra*.
[4] See *Publications of the Court*, Series A, No. 2, pp. 18-23.
[5] See *ibid.* p. 23.
[6] See Art. 11, p. 205 *supra*.
[7] See *Publications of the Court*, Series A, No. 2, p. 24.
[8] See pp. 205-206 *supra*.

which replaced Article 311 of the abortive Treaty of Sèvres, a provision expressly mentioned in the original draft of Article 11 of the Mandate.[1] Protocol XII. limits the powers of the Palestine Administration to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein under Article 11 of the Mandate. The Rutenberg concessions fall within this description and therefore, if the Administration has, by granting the Rutenberg concessions, committed a breach of the obligations imposed by Protocol XII., there has been an infringement of Article 11 of the Mandate which may be made the subject of an action before the Court under Article 26.[2]

The judgment then refers to Protocol XII. for the purpose of ascertaining whether the international obligations arising out of it apply to the Mavrommatis concessions, and finds that the Protocol only protects concessions entered into before October 29, 1914; by Article 9 the State which acquires Turkish territory is subrogated to the rights and obligations of Turkey in regard to such concessions. This applies to the Jerusalem concessions, which date from before October 29, 1914.[3] The Court notes that the Parties do not agree as to which provision of the Protocol these concessions come under; whether the holder is entitled to have them re-adapted (Art. 4), or whether he is only entitled to request that the contracts be dissolved with compensation for work done (Art. 6). The question whether the Palestine Administration can withhold from M. Mavrommatis the re-adaptation of the Jerusalem concessions is, in the judgment of the Court, a question concerning the interpretation of Article 11 of the Mandate, and consequently the provisions of Art. 26 are applicable to it.[4] The Jaffa concessions, on the other hand, not having

[1] See *Publications of the Court*, Series A, No. 2, pp. 24-26.

[2] See *ibid.* p. 26.

[3] See p. 203 *supra*.

[4] See *ibid.* pp. 26-27; for Arts. 11 and 26 of the Mandate, see p. 205 *supra*

been signed until January 28, 1916, fall outside the protection afforded by the Protocol, have accordingly no connection with Article 11 of the Mandate, and consequently do not come within the category of disputes for which the Mandatory has accepted the jurisdiction of the Court.[1]

The judgment deals with a further point, namely, whether the jurisdiction of the Court under Articles 26 and 11 of the Mandate in regard to the Jerusalem concessions may not be limited by Protocol XII. which might overrule the provisions of the Mandate.[2] The Protocol sets up a special system for settling compensation and other matters in respect of concessions entered into before October 29, 1914, a system entirely unrelated to the Permanent Court of International Justice. With reference to this point the Court recognizes that the Protocol, an international instrument quite distinct from and independent of the Mandate, deals specifically and in explicit terms with concessions such as those of M. Mavrommatis, whereas Article 11 of the Mandate deals with them only implicitly; and further, that it is more recent in date than the Mandate. All the conditions therefore are fulfilled which might make the clauses of the Protocol overrule those of the Mandate.[3] The Court, however, points to the fact already established that Article 11 of the Mandate refers to the Protocol.

"This international instrument must," therefore, "be examined by the Court not merely as a body of rules which may limit its jurisdiction but also and above all as applicable under the terms of Article 11 which is the very clause from which the Court derives its jurisdiction. In this respect the Protocol is the complement of the provisions of the Mandate in the same way as a set of regulations alluded to in a law indirectly forms part of it.[4] . . . . In cases of doubt the Protocol, being a special and more recent agreement should prevail," but at the same time, "the provisions of the Mandate and more particularly those regarding the jurisdicton of the Court are applicable in so far as they are compatible with the Protocol."[5]

[1] *Ibid.* pp. 27-29. [2] *Ibid.* p. 29. [3] *Ibid.* p. 30.
[4] *Ibid.* pp. 30, 31. [5] *Ibid.* p. 31.

In the opinion of the Court the Protocol and Article 11 of the Mandate are in no way incompatible in so far as substantive rules are concerned. It is only the

"provisions of the Protocol concerning procedure which may be regarded as incompatible, not with Article 11 of the Mandate but with the jurisdiction which the Court derives from that Article. In so far as the Protocol establishes a special jurisdiction for the assessment of indemnities, this special jurisdiction—provided that it operates in the conditions laid down—excludes as regards these matters the general jurisdiction given to the Court in disputes concerning the interpretation and application of the Mandate. Subject to the special powers given to the experts and to the time limits and declarations provided for [in the Protocol] the Court's jurisdiction remains intact in so far as it is based on Article 11 [of the Mandate]. In particular this is the case as regards disputes relating to the interpretation and application of the provisions of the Protocol itself." [1]

Two more points may be mentioned. The Court declined to accede to an objection to the application instituting proceedings on the ground that it was filed before Protocol XII. had been ratified. The ratification having taken place before the date of the judgment it was held that, inasmuch as the application could have been re-submitted, the objection was merely one of form which could not be upheld.[2] Finally, in regard to the British Government's further contention that there was no jurisdiction because the acts complained of were prior in date to the coming into force of the Mandate, the Court decided that the alleged breach of the terms of the Mandate (viz.: the grant of the Rutenberg concessions) was a continuing one and still subsisting; but it should be recorded that, in discussing this contention, the Court expressed the general opinion that "in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment." [3]

In the result the Court, as already stated, allowed the preliminary objection of the British Government in so

[1] See *Publications of the Court*, Series A, No. 2, pp. 31, 32.

[2] See *ibid.* p. 34.

[3] See *ibid.* p. 35.

far as it related to the claim in respect of the works at Jaffa, and dismissed it in so far as it related to the claim in respect of the works at Jerusalem, and reserved this part of the suit for judgment on the merits.[1]

This case is of considerable importance as affecting the interpretation of Mandates, and in particular, the nature and limits of the Court's jurisdiction thereunder, by reason of the wide extension, at the present time, of the Mandatory system. If reference is made to an earlier chapter of this book,[2] it will be seen that there are no less than eleven Mandates containing an Article in the same terms as Article 26 of the Mandate for Palestine, under which the jurisdiction of the Court was invoked in this case.

It has not been thought advisable, in giving an account of the case, to refer to the contents of the dissenting opinions, but it may, perhaps, be permissible to point out that the number and authority of the dissenting judges[3] may tend to restrict within narrower limits than might otherwise be the case the application as a precedent of the decision of the majority.

Advisory Opinion on the Question of the Monastery of Saint Naoum.

This case, which was also dealt with at the fifth (ordinary) session of the Court, related to the fixing of the frontier between Albania and the Serb-Croat-Slovene State. At the termination[4] of the second Balkan War in 1912, the independent State of Albania was set up by the Great Powers, and the Treaty of London of May 17-30, 1913, reserved to them the task of settling its frontiers. Accordingly the question of the fixing of the frontiers of the new State was submitted to the Conference

[1] Since going to press, the reserved part of the case has been argued before the Court and judgment delivered. See *Publications of the Court*, Series A, No. 5.

[2] See pp. 82-84 *supra*.

[3] See p. 206 *supra*.

[4] The statement of facts in the text is a summary of that contained in the Opinion of the Court. See *Publications of the Court*, Series B, No. 9, pp. 9-14.

of Ambassadors which sat in London in 1913. This Conference adopted certain decisions known as the "Protocol of London" in regard to the situation of the frontier and appointed a Delimitation Commission which set to work on the spot. The Great War, however, prevented the complete fixing of the frontiers and when the Peace Conference met at Paris in 1919 it took cognizance of the Albanian question. In December 1920 Albania was admitted to the League of Nations and on October 2, 1921, the Assembly by a unanimous vote (including that of the interested States) left the task of settling the Albanian frontiers to the Principal Allied Powers. They, in turn, entrusted the matter to the Conference of Ambassadors which, on November 9, 1921, took a decision whereby the frontiers as established in 1913 were confirmed, but a Delimitation Commission was set up to trace the northern and north-eastern frontier line on the spot. Difficulties, however, arose with regard to this line in the region of the Monastery of Saint Naoum, and after consideration of reports made by the Delimitation Commission and information supplied by the Albanian and Serb-Croat-Slovene Governments, the Conference on December 6, 1922, took a decision whereby the monastery was allotted to Albania. Five months later the Yugo-Slav Government asked for the revision of this decision, and after further examination, the Conference were unable to agree upon a solution. Thereupon they applied to the League of Nations for guidance, and the Council of the League, on June 17, 1924, adopted a resolution referring the matter to the Court for its advisory opinion.

The question submitted to the Court was as follows :

"Have the Principal Allied Powers, by the decision of the Conference of Ambassadors of December 6, 1922, exhausted, in regard to the frontier between Albania and the Kingdom of the Serbs, Croats and Slovenes at the Monastery of Saint Naoum, the mission, such as it has been recognized by the interested Parties, which is contemplated by a unanimous resolution of the Assembly of the League of Nations of October 2, 1921 ?"

The Court was supplied with all the relevant documents, and, at public sittings held on July 23, 1924, heard oral statements by representatives of the Serb-Croat-Slovene and Albanian Governments,[1] and also of the Greek Government.[2]

The Opinion, which was unanimous,[3] was delivered on September 4, 1924. The Court states that the legal foundation of the decision of November 9, 1921, alluded to above, is to be found in the fact that the Principal Allied Powers, acting through the Conference of Ambassadors, had, by reason of the foregoing facts, the power to render a decision;[4] reference is made to the advisory opinion regarding the delimitation of the Polish-Czecho-Slovakian frontier,[5] where the general considerations determining the nature and effect of a decision of this kind are stated. The decision of December 6, 1922,[6] is based on the same powers; it has the same definitive character and the same legal effect.[7]

The Court then discusses the contention of the Serb-Croat-Slovene State that it had a vested right under the decision of November 9, 1921, by reason of the confirmation by that decision of the frontier of 1913, and comes to the conclusion that the Protocol of London of 1913 could not be regarded as definitely attributing the Monastery of Saint Naoum to Serbia.[8] It was therein provided that the region " as far as the [*jusqu'au*] Monastery of Saint Naoum " should be attributed to Albania, and the Court finds that it is impossible to affirm which of the two equally possible interpretations of the expression *jusqu'au*—the inclusive or the exclusive interpretation—should be selected.

[1] It may be mentioned that the Albanian Government was represented by M. Gilbert Gidel, a French jurist.

[2] See *Publications of the Court*, Series B, No. 9, p. 9. The speeches are set out in Series C, No. 5-11.

[3] The Court consisted of the eleven judges. For list, see p. 281 *infra*.

[4] See *Publications of the Court*, Series B, No. 9, pp. 14, 15.

[5] See pp. 198-202 *supra*.

[6] See p. 214 *supra*.

[7] See *Publications of the Court*, Series B, No. 9, p. 15.

[8] See *ibid.* pp. 16-21.

In the result, the Court answered the question referred to it in the affirmative.

It should be added that the Council of the League at its meeting in September 1924 at Geneva adopted the Court's advisory opinion and transmitted it to the Conference of Ambassadors.

Interpretation of Treaty of Neuilly, Art. 179, Annex, Para. 4.

This case is interesting as the first instance of recourse to the Court's summary procedure,[1] and also because it is the first occasion upon which two States, belligerent in the late war, have agreed *ad hoc* to submit the provisions of a Peace Treaty to judicial interpretation. On March 18, 1924, the Bulgarian and Greek Governments by special agreement decided to submit to the Permanent Court of International Justice, in its Chamber of Summary Procedure, the dispute which had arisen between them as to the interpretation of the above-mentioned paragraph of the Treaty of Neuilly.[2] This provision is in the following terms :

" All property, rights and interests of Bulgarian nationals within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in Bulgarian territory, or debts owing to them by Bulgarian nationals, and with payment of claims growing out of acts committed by the Bulgarian Government or by any Bulgarian authorities since October 11, 1915, and before that Allied or Associated Power entered into the war.

" The amount of such claims may be assessed by an arbitrator appointed by M. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payments of the amounts due

[1] See pp. 120-121 *supra*.

[2] See *Publications of the Court*, Series A, No. 3, pp. 4-5.

in respect of claims by nationals of such Allied or Associated Power with regard to their property, rights and interests in the territory of other enemy Powers, in so far as those claims are otherwise unsatisfied."

Under the terms of the agreement of reference the Court had to "determine the precise meaning of the last sentence ["*phrase*"] of the first sub-paragraph" of the above provision, replying in particular to the two following questions:

"(1) Does the text above quoted authorize claims for acts committed even outside Bulgarian territory as constituted before October 11, 1915, in particular in districts occupied by Bulgaria after her entry into the war?

"(2) Does the text above quoted authorize claims for damages incurred by claimants not only as regards their property, rights and interests, but also as regards their person, arising out of ill-treatment, deportation, internment or other similar acts?" [1]

In accordance with Article 69 of the Rules of Court,[2] the parties filed with the Registry on July 31, 1924, their respective Cases, which were duly communicated to the other party by the Court.[3] In accordance with Article 69 of the Rules of Court,[4] the parties jointly proposed that the Court should authorize the submission of Replies, as an exception to the procedure indicated in that Article. The Court having granted this request, the Replies were filed on August 25, 1924, and, as the Court considered the information thus supplied to be adequate,[5] it found it unnecessary to institute oral proceedings.[6]

Judgment was given in public on September 12, 1924, bythe Court sitting as a Chamber of Summary Procedure, composed of MM. Loder, *President*, Weiss, *Vice-President* and Huber, *Judge*.[7]

[1] See *Publications of the Court*, Series A, No. 3, p. 5.

[2] See p. 279 *infra*.

[3] See Statute, Art. 43, p. 251 *infra*.

[4] See p. 279 *infra*.

[5] See Rules of Court, Art. 69, p. 279 *infra*.

[6] See *Publications of the Court*, Series A, No. 3, p. 5. The written pleadings are reproduced in Series C, No. 6.

[7] *Ibid.* p. 4. It may be mentioned that contrary to the usual practice (see p. 117 *supra*), this judgment is framed on the Continental model.

The judgment examines the material paragraph, as well as other provisions of the Treaty of Neuilly, and comes to the conclusion that the natural meaning of the words in question, agreeable to the intention of the parties as expressed in the Treaty, is to include both categories of claims referred to above.[1]

The Court accordingly decides :

" That the last sentence [" *phrase* "] of the first sub-paragraph of paragraph 4 of the Annex to Section IV. of Part IX. of the Treaty of Neuilly [2] should be interpreted as authorizing claims in respect of acts committed even outside Bulgarian territory as constituted before October 11, 1915, and in respect of damage incurred by claimants not only as regards their property, rights and interests, but also as regards their person ;

" That reparation due on this ground is within the scope of the reparation contemplated in Article 121, and consequently is included in the total capital sum mentioned in Articles 121 and 122." [3]

[1] See p. 217 *supra*. [2] See pp. 216-217 *supra*.

[3] See *Publications of the Court*, Series A, No. 3, pp. 9-10. Since going to press, the Greek Government requested the Chamber for an interpretation of this judgment in pursuance of Art. 60 of the Statute (see p. 254 *infra*). This request was refused on the ground that what was asked for as an " interpretation " went beyond the scope of the original submission to arbitration.

VI

THE COURT AND THE LEAGUE

Two general questions naturally arise in connection with the constitution of the Court, viz. : What are its relations to the League of Nations ? and, What sanctions, if any, exist for the enforcement of its decisions ? As these questions are inter-related it is proposed to deal briefly with them in this chapter.

The first point, which requires to be emphasized, is that the Court is an institution distinct from the League. It is only through the election of the judges that the League exercises any control over it, and in that respect the relation is momentary—once the election is over and the Court is constituted, its members are entirely independent and in no wise responsible to the League or either of its constituent organs.[1]

The Jurists' Report contains an interesting passage in which an analogy is drawn between the executive, the legislative and the judicial power within a State, on the one hand, and the Council of the League, the Assembly and the Court on the other.[2] The comparison is ingenious, and may have proved useful as suggesting the solution of the problem of the election of the judges, but it cannot be pressed too far or treated as accurately representing the actual position. Within the State, no matter how strictly the principle of judicial independence is safeguarded, there is always an ultimate power in the sovereign authority to remove judges. That power is

[1] See the observations in M. Léon Bourgeois' Report to the Council, p. 306 *infra*.

[2] See *Report* (Art. 4), *Procès Verbaux of Jurists' Committee*, pp. 704-705.

not possessed by the League of Nations in regard to the Court.[1] Again, the legislature enacts laws which are binding upon its national tribunals, but the Assembly of the League has no such power in regard to the international Court. Finally, the sovereign power in the State, which created its Courts, can alter their nature and functions or abolish them altogether, whereas the League of Nations has no power whatever to modify the Statute of the Permanent Court of International Justice. In fact it may fairly be said that, except for the election of the judges, the Court could exist and function as an international institution if the League disappeared, and in this connection it should be remembered that the Statute of the Court, which alone gives it legal existence and determines its powers, was brought into operation by the direct act of the individual signatories.[2] As regards the election of judges, the organic existence of the League is only necessary in so far as an Assembly and a Council must be in being at the date of the election. There would not indeed appear to be any reason why a State (*e.g.* the United States), which is not a Member of the League should not appoint representatives *ad hoc* to sit in each body for the sole purpose of the election of judges. If such a course were contemplated it is submitted that it could be put into execution without the necessity of amending either the Covenant or the Statute of the Court.

Although it has seemed advisable to point out the independent character of the Court, the foregoing remarks are not intended to belittle the importance of the League of Nations in relation to the Court. There can be no question that, but for the existence of the League, the Court could not have been created.[3] Moreover, the international system inaugurated by the Covenant has a most important bearing upon the Court's activities and great value in rendering them effective. This subject has already been referred to in an earlier chapter where

[1] See pp. 34-35 *supra*.

[2] See pp. 11-12, 13-14 *supra*.

[3] See p. 5 *supra*.

the effect upon the Court's jurisdiction of the provisions of the Covenant as to the settlement of international disputes generally, and as to Advisory Opinions in particular, was indicated.[1] The question of sanctions, however, remains to be dealt with.

In the great majority of cases the moral sanction of public opinion will be sufficient to ensure that the decisions of the Court, possessing the inherent authority due to the high character and independent position of its members, will be respected and carried into effect. But although such moral pressure probably constitutes the most effective guarantee for the due execution of the Court's decisions, it is an aspect of the matter which does not fall within the scope of this book, and we shall confine our attention to the question of material sanctions. It is due to the Covenant and to the Covenant alone that certain material sanctions are provided for enforcing the judgment of the Court. The matter arises in this way: by Article 12 "the Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement, or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council."[2]

Article 13, which deals with the submission of disputes to arbitration or judicial settlement,[3] contains the following paragraph: "The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

In Article 16 it is provided as follows: "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto*

[1] See pp. 62, 64-71 *supra*.

[2] See p. 231 *infra*.

[3] See p. 232 *infra*.

be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

"It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."[1]

Perhaps the working of this code can most easily be appreciated by taking a concrete example—the simplest illustration is selected for the sake of clarity although stated in bald outline it may seem unreal. Suppose that a dispute between State A and State B has been submitted to the Court and a judgment given, whereby State A is required to pay to State B a sum of money as reparation for the breach of an international obligation. One of three things may happen: (1) the judgment may be carried out and both parties rest satisfied, in which case there is, of course, no occasion for further action; but (2) State A may decline to pay the money; or (3) State A may comply with the judgment and pay the money, but State B may consider that the reparation is insufficient. In case (2) it would be the duty of the Council to propose measures for the purpose of giving effect to the judgment. It is to be observed that Article 13 of the Covenant is imperative on this point. There is no option: "the Council *shall* propose what steps should be taken." No indication is given as to the nature of the steps, but it would appear to be open to the Council, if necessary, to propose to the Members of the League coercive measures against State A. It is to be observed that it is open to State B, when three months have elapsed from

[1] The full text of Art. 16 is set out at p. 234 *infra*.

the date of the judgment to declare war against State A, and this is an additional reason for the Council and the other Members of the League to induce State A to give effect to the Court's decision. In case (3) two alternatives are possible. Either State B may take measures stopping short of war, or it may go to war. In the first alternative, although the provisions of Article 16 of the Covenant would not apply, there would inevitably arise a fresh dispute which would come up for settlement under the code referred to above, and in which State B would find itself in an indefensible position. In the second alternative, however, it would be the duty of the Members of the League to take the measures described in Article 16 against State B, and thus enforce respect for the decision of the Court by direct sanctions.

From what has been said above it appears that, as between Members of the League, there are sanctions behind the judgments of the Court, not indeed, of the same nature as in the domestic sphere, but on the whole reasonably likely to be effective in practice.

Under the code laid down by the Covenant a dispute between Members of the League may fail to be submitted to judicial settlement or arbitration, in which event it must be submitted to inquiry by the Council.[1] It is when this occurs that the dispute may be referred by the Council to the Court for Advisory Opinion under Article 14 of the Covenant,[2] and this brings us to the consideration of the sanctions applicable to the Court's opinions as distinct from its judgments. It is to be observed that, in such cases, the ruling of the Court only becomes enforceable by virtue of its adoption by the Council. Article 15 of the Covenant provides, in paragraph 6, that " if a report of the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with

[1] See Art. 12, p. 221 *supra*, and p. 231 *infra*. Also Art. 15, pp. 232-233 *infra*.

[2] Set out at p. 232 *infra*.

any party to the dispute which complies with the recommendations of the report." Where a dispute has been referred by the Council to the Court for opinion, the strong probability is that the members of the Council other than the representatives of the parties to the dispute will unanimously adopt the opinion,[1] and, accordingly, base the recommendations of their report upon it. When this happens the opinion so adopted acquires the same force, in regard to the consequences involved for the State which goes to war with the party complying with it, as a judgment. In other words, where an Advisory opinion has been embodied in a unanimous report of the Council, Article 16 of the Covenant[2] applies as against the Covenant-breaking State. There is, however, a somewhat curious distinction under the Covenant between the judicial settlement of disputes and settlement by the Council, namely, the absence in the latter case of any provision that in the event of any failure to carry out the terms recommended the Council shall propose steps for giving effect thereto.[3] In this respect the sanction behind Advisory Opinions endorsed by the Council is less than that applicable to judgments. If a State refuses to carry out the terms, the other party to the dispute is free to resort to war after three months from the date of the Council's report, and there is no express provision for action by the Council for the purpose of preventing such a state of affairs and securing respect for its recommendations, although the intervention of the League can be secured under Article 11.[4]

So far we have dealt with the position of the Court in regard to States which are Members of the League. Under Article 17 of the Covenant[5] provision is made for the application of the same system to non-Members, such application being conditional upon the consent of the non-Member State. If the invitation there referred

[1] See pp. 69-70, 143-144, 189-190, 198, 202, 216 *supra*.

[2] See p. 222 *supra*, and p. 234 *infra*.

[3] See Art. 13, last sentence, p. 221 *supra*, and p. 232 *infra*.

[4] See p. 231 *infra*.

[5] See p. 235 *infra*.

to is accepted by such State, what is said above as to sanctions would apply to the non-Member as it applies to Members of the League.

But it is necessary to consider the position with reference to non-Members generally and apart from the special provisions of Article 17 of the Covenant. As has been seen, under Article 35 of the Statute,[1] the Court is unconditionally open to States which, not being Members of the League, are mentioned in the Annex to the Covenant; whereas it is open to other non-Member States on condition that they make a declaration accepting the obligation; (1) to carry out in full good faith the decision of the Court; and (2) not to resort to war against a State complying therewith.[2] Therefore, if a State mentioned in the Annex, but not a Member of the League, *e.g.* the United States, were to adhere to the Statute, it would not thereby be bound by any express obligation either to carry out the Court's decision in cases to which it was a party, nor to refrain from going to war against a State complying with the decision, and, of course, no sanction whatever under the Covenant would be applicable to the judgment. In the event of the United States joining the Court, observance of its decisions by that Power would depend upon the implied obligation resulting from the fact of acceptance of the Court's jurisdiction. As to the States which are neither Members of the League nor mentioned in the Annex to the Covenant, if they take part in a contested case before the Court without accepting the obligations of membership of the League under Article 17 of the Covenant, no sanction exerciseable by the League of Nations attaches to the judgment. The decision of the Court depends for enforcement upon the contractual obligation assumed by the State in question under the above-mentioned declaration.

[1] See pp. 55-56 *supra*, and pp. 248-249 *infra*.

[2] See pp. 56-58 *supra*, and pp. 287-288 *infra*.

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PART I. OPERATIVE DOCUMENTS

1. THE COVENANT OF THE LEAGUE OF NATIONS[1]

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE 1.

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

[1] The Covenant is here printed with the amendments (in Articles 6, 12, 13 and 15) which are actually in force.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE 3.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals, and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

ARTICLE 4.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four[1] other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.

[1] Increased to six under the second paragraph of Article 4. See resolution of the Assembly of September 25, 1922.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interest of that Member of the League.[1]

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.[1]

All matter of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council, and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex ; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.

[1] See pp. 163-164 *supra*.

The allocation of the expenses of the League set out on Annex 3 shall be applied as from January 1, 1922, until a revised allocation has come into force after adoption by the Assembly.

ARTICLE 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League, when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE 8.

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

ARTICLE 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.[1]

ARTICLE 12.

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.[2]

In any case under this Article, the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

[1] See p. 224 *supra*.

[2] See pp. 64-65, 221 *supra*.

ARTICLE 13.

The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.[1]

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.[2]

ARTICLE 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice.[3] The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it.[4] The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.[5]

ARTICLE 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of

[1] See pp. 64-66, 145-146, 222-223 *supra*.
[2] See p. 221 *supra*.
[3] See pp. 1-13 *supra*.
[4] See pp. 9, 61-64 *supra*.
[5] See pp. 67-71, 223-224 *supra*.

the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.[1]

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.[2]

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.[3]

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made

[1] See pp. 64 66, 145, 146, 155 *supra*. [2] See pp 223-224 *supra*.
[3] See pp. 146-154 *supra*.

within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.[1]

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

[1] See pp. 222-224.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.[1]

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of Membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of Membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable

[1] See pp. 224-225 *supra*.

and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the

rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in

their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties, if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of

health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendments shall bind any Member of the League which signifies its dissent therefrom but in that case it shall cease to be a Member of the League.

ANNEX.

I. Original Members of the League of Nations, Signatories of the Treaty of Peace.

United States of America
Belgium
Bolivia.
Brazil.
British Empire.
Canada.
Australia.
South Africa.
New Zealand.
India.
China.
Cuba.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Roumania.
Serb-Croat-Slovene State.
Siam.
Czechoslovakia.
Uruguay.

States invited to accede to the Covenant.

Argentine Republic.
Chile.
Colombia.
Denmark.
Netherlands.
Norway.
Paraguay.
Persia.
Salvador.
Spain.
Sweden.
Switzerland.
Venezuela.[1]

2. RESOLUTION CONCERNING THE ESTABLISHMENT OF A PERMANENT COURT OF INTERNATIONAL JUSTICE, PASSED BY THE ASSEMBLY OF THE LEAGUE OF NATIONS, GENEVA, DECEMBER 13, 1920

1. The Assembly unanimously declares its approval of the draft Statute of the Permanent Court of International Justice—as amended

[1] All the above, except the U.S., Ecuador and Hedjaz, having ratified the Covenant, are Members of the League. In addition the following States have joined the League: Albania, Austria, Hungary, Bulgaria, Costa Rica, S. Domingo, Esthonia, Ethiopia, Finland, Irish Free State, Latvia, Lithuania, Luxemburg.

by the Assembly—which was prepared by the Council under Article 14 of the Covenant and submitted to the Assembly for its approval.[1]

2. In view of the special wording of Article 14, the Statute of the Court shall be submitted within the shortest possible time to the Members of the League of Nations for adoption in the form of a protocol duly ratified and declaring their recognition of this Statute. It shall be the duty of the Council to submit the Statute to the Members.[2]

3. As soon as this protocol has been ratified by the majority of the Members of the League, the Statute of the Court shall come into force and the Court shall be called upon to sit in conformity with the said Statute in all disputes between the Members or States which have ratified, as well as between the other States, to which the Court is open under Article 35, paragraph 2, of the said Statute.

4. The said protocol shall likewise remain open for signature by the States mentioned in the Annex to the Covenant.

3. STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE PROVIDED FOR BY ARTICLE 14 OF THE COVENANT OF THE LEAGUE OF NATIONS

Article 1.

A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.[3]

CHAPTER I.—ORGANIZATION OF THE COURT

Article 2.

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.[4]

[1] See pp. 1-9 *supra*.
[2] See pp. 11-12 *supra*.
[3] See pp. 21-22 *supra*.
[4] See pp. 22-24 *supra*.

ARTICLE 3.

The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.[1]

ARTICLE 4.

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall by drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.[2]

ARTICLE 5.

At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.[3]

ARTICLE 6.

Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.[4]

[1] See p. 22 *supra*.
[2] See pp. 24-25 *supra*.
[3] See pp. 25-26 *supra*.
[4] See p. 26 *supra*.

ARTICLE 7.

The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.[1]

ARTICLE 8.

The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.[2]

ARTICLE 9.

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.[3]

ARTICLE 10.

Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.[4]

ARTICLE 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.[5]

ARTICLE 12.

If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

[1] See p. 26 *supra*.
[2] See pp. 26-27 *supra*.
[3] See p. 27 *supra*.
[4] See pp. 27-28 *supra*.
[5] See p. 28 *supra*.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.[1]

ARTICLE 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.[2]

ARTICLE 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.[3]

ARTICLE 15.

Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.[4]

ARTICLE 16.

The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.[5]

[1] See pp. 28-30 *supra*.
[2] See pp. 30-31, 119 *supra*.
[3] See pp. 31-32 *supra*.
[4] See p. 32 *supra*.
[5] See pp. 32-34 *supra*.

ARTICLE 17.

No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a Commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.[1]

ARTICLE 18.

A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations by the Registrar.

This notification makes the place vacant.[2]

ARTICLE 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.[3]

ARTICLE 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.[4]

ARTICLE 21.

The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.[5]

[1] See p. 34 *supra*.
[2] See pp. 34-35 *supra*.
[3] See p. 35 *supra*.
[4] See pp. 35-36 *supra*.
[5] See pp. 36-38 *supra*.

ARTICLE 22.

The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.[1]

ARTICLE 23.

A session of the Court shall be held every year.

Unless otherwise provided by Rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.[2]

ARTICLE 24.

If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.[3]

ARTICLE 25.

The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.[4]

ARTICLE 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

The Court will appoint every three years a special chamber of five judges selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the

[1] See pp. 38-39 *supra*.
[2] See pp. 39-41 *supra*.
[3] See p. 41 *supra*.
[4] See pp. 42-43 *supra*.

parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one half, representatives of the workers, and as to one half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.[1]

ARTICLE 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

[1] See pp. 43-45 *supra*.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of " Assessors for Transit and Communications cases " composed of two persons nominated by each Member of the League of Nations.[1]

ARTICLE 28.

The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.[2]

ARTICLE 29.

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.[3]

ARTICLE 30.

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.[4]

ARTICLE 31.

Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

[1] See pp. 45-46 *supra*. [2] See p. 46 *supra*. [3] See p. 47 *supra*.
[4] See p. 47 *supra*. The Rules of Court are set out at pp. 260-280 *infra*.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.[1]

ARTICLE 32.

The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges, shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.[2]

ARTICLE 33.

The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.[3]

CHAPTER II.—COMPETENCE OF THE COURT

ARTICLE 34.

Only States or Members of the League of Nations can be parties in cases before the Court.[4]

ARTICLE 35.

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

[1] See pp. 47-51 *supra*.
[2] See pp. 51-52, 283-286 *supra*.
[3] See p. 52 *supra*.
[4] See pp. 53-55 *supra*.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.[1]

ARTICLE 36.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.[2]

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning :

(*a*) The interpretation of a Treaty.
(*b*) Any question of International Law.
(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation.
(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.[3]

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.[4]

ARTICLE 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.[5]

[1] See pp. 55-58 *supra*.
[2] See pp. 58, 61-86 *supra*.
[3] See pp. 11, 60-61, 86-89 *supra*.
[4] See pp. 84-86, 89-90 *supra*.
[5] See pp. 58, 63-64 *supra*.

ARTICLE 38.

The Court shall apply :

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States ;

2. International custom, as evidence of a general practice accepted as law ;

3. The general principles of law recognized by civilized nations ;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[1]

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.[2]

CHAPTER III.—PROCEDURE

ARTICLE 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers ; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court, may at the request of the parties, authorize a language other than French or English to be used.[3]

ARTICLE 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.[4]

[1] See pp. 90-93 *supra*.
[2] See pp. 93-94 *supra*.
[3] See pp. 95-96 *supra*.
[4] See pp. 97-99 *supra*.

ARTICLE 41.

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.[1]

ARTICLE 42.

The parties shall be represented by Agents.

They may have the assistance of counsel or advocates before the Court.[2]

ARTICLE 43.

The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.[3]

ARTICLE 44.

For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.[4]

ARTICLE 45.

The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.[5]

ARTICLE 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.[6]

[1] See p. 100 *supra*.
[2] See pp. 100-101 *supra*.
[3] See p. 100 *supra*.
[4] See pp. 107-108 *supra*.
[5] See p. 105 *supra*.
[6] See p. 105 *supra*.

ARTICLE 47.

Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.[1]

ARTICLE 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.[2]

ARTICLE 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.[3]

ARTICLE 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.[4]

ARTICLE 51.

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.[5]

ARTICLE 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.[6]

ARTICLE 53.

Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

[1] See p. 106 *supra*.
[2] See p. 106 *supra*.
[3] See p. 107 *supra*.
[4] See p. 108 *supra*.
[5] See p. 109 *supra*.
[6] See p. 109 *supra*.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.[1]

ARTICLE 54.

When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.[2]

ARTICLE 55.

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.[3]

ARTICLE 56.

The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.[4]

ARTICLE 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.[5]

ARTICLE 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.[6]

ARTICLE 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.[7]

[1] See p. 110 *supra*.
[2] See p. 114 *supra*.
[3] See p. 114 *supra*.
[4] See p. 114 *supra*.
[5] See pp. 114-115 *supra*.
[6] See pp. 115-116 *supra*.
[7] See pp. 92, 116 *supra*.

ARTICLE 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.[1]

ARTICLE 61.

An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.[2]

ARTICLE 62.

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.[3]

ARTICLE 63.

Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings: but if it uses this right, the construction given by the judgment will be equally binding upon it.[4]

ARTICLE 64.

Unless otherwise decided by the Court, each party shall bear its own costs.[5]

[1] See p. 116 *supra*.
[2] See pp. 117-119 *supra*.
[3] See pp. 110-113 *supra*.
[4] See pp. 111-113 *supra*.
[5] See pp. 119-120 *supra*.

4. PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE PROVIDED FOR BY ARTICLE 14 OF THE COVENANT OF THE LEAGUE OF NATIONS

The Members of the League of Nations, through the undersigned,[1] duly authorized, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on December 13, 1920, at Geneva.[2]

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on December 13,[2] 1920, is subject to ratification.[1] Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature [1] by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic. December 16, 1920.

OPTIONAL CLAUSE

The undersigned, being duly authorized thereto, further declare, on behalf of their Government, that, from this date, they accept as compulsory *ipso facto* and without special Convention, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, under the following conditions.[3]

[1] For table of signatures and ratifications, see Appendix No. 5, pp. 256-259 *infra*.

[2] See pp. 12, 239-240 *supra*.

[3] For table showing the States which have signed and ratified this clause, see Appendix No. 5, pp. 256-259 *infra*.

5. TABLE OF SIGNATURES AND RATIFICATIONS

Protocol of Signature of the Statute of the Court.		Optional Clause.[1]	
Signatory States.	Date of Ratification.	Signatory States.	Date of Ratification when required.[2]
Albania	July 13, 1921		
Australia	Aug. 4, 1921		
Austria	July 23, 1921	Austria	Mar. 14, 1922 For five years.
Belgium	Aug. 29, 1921		
Bolivia			
Brazil	Nov. 1, 1921	Brazil Subject to the condition that two at least of the Powers permanently represented upon the Council of the League of Nations accept compulsory jurisdiction.	Nov. 1, 1921 For five years.
Bulgaria	Aug. 12, 1921	Bulgaria	Aug. 12, 1921
Canada	Aug. 4, 1921		
Chili			
China	May 13, 1922	China	May 13, 1922 For five years.
Colombia			
Costa Rica		Costa Rica	
Cuba	Jan. 12, 1922		

[1] The Optional Clause is accepted by a Declaration, the usual form of which is as follows: "On behalf of , I recognize, in relation to any other Member or State which accepts the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the Court as compulsory *ipso facto* and without special convention." The Declarations made by most of the States mentioned in this table are reproduced in *Publications of the Court*, Series D, No. 4, pp. 19-23.

[2] When a government has signed the Optional Clause "subject to ratification," if ratification has taken place, the date is given; in other cases ratification is not required.

Protocol of Signature of the Statute of the Court.		Optional Clause.	
Signatory States.	Date of Ratification.	Signatory States.	Date of Ratification when required.
Czecho-slovakia	Sept. 2, 1921		
Denmark	June 13, 1921	Denmark Subject to ratification.	June 13, 1921 For five years.
Esthonia	May 2, 1923	Esthonia	May 2, 1923
Finland	April 6, 1922	Finland Subject to ratification.	April 6, 1922 For five years.
France	Aug. 7, 1921	France Subject to ratification for fifteen years and with the option of denunciation in case the Protocol of Arbitration, Security and Disarmament of Oct. 2, 1924, becomes inoperative.[1]	
Great Britain	Aug. 4, 1921		
Greece	Oct. 3, 1921		
Haiti	Sept. 7, 1921	Haiti	
Hungary	Aug. 1, 1923		
India	Aug. 4, 1921		
Italy	June 20, 1921		
Japan	Nov. 16, 1921		

[1] The declaration, dated October 2, 1924, whereby France accepts the Optional Clause, is in the following terms : " Je déclare que le Gouvernement de la République française adhère à la disposition facultative de l'article 36, para. 2, du Statut de la Cour, sous réserve de ratification, sous réserve de réciprocité, pour une durée de 15 années avec faculté de dénonciation au cas où le Protocole d'Arbitrage, de Securité, et de Reduction des Armaments signé en date de ce jour deviendrait caduc, et, d'autre part, sous le bénéfice des observations faites à la première Commission de la Vème Assemblée, aux termes desquelles : 'l'une des parties en litige pourra appeler l'autre devant le Conseil de la Société des Nations, à l'éffet de procéder à l'éssai de règlement pacifique prévu au para. 3 de l'Article 15 du Pacte et, pendant le dit éssai de conciliation aucune partie ne pourra citer l'autre devant la Cour de Justice.' (Signed) Briand."

Protocol of Signature of the Statute of the Court.		Optional Clause.	
Signatory States.	Date of Ratification.	Signatory States.	Date of Ratification when required.
Latvia	Feb. 12, 1924	Latvia Subject to ratification for five years in any future dispute in respect of which the parties have not agreed to have recourse to another method of pacific settlement.	
Liberia		Liberia Subject to ratification.	
Lithuania	May 16, 1922	Lithuania	May 16, 1922 For five years.
Luxemburg		Luxemburg Subject to ratification for five years.	
Netherlands	Aug. 6, 1921	Netherlands	August 6, 1921 For five years in respect of any future dispute in regard to which the parties have not agreed to have recourse to some other means of friendly settlement.
New Zealand	Aug. 4, 1921		
Norway	Aug. 20, 1921	Norway	Oct. 3, 1921 For five years.
Panama		Panama	
Paraguay			
Persia			
Poland	Aug. 26, 1921		

Protocol of Signature of the Statute of the Court.		Optional Clause.	
Signatory States.	Date of Ratification.	Signatory States.	Date of Ratification when required.
Portugal	Oct. 8, 1921	Portugal	Oct. 8, 1921
Roumania	Aug. 8, 1921		
Salvador		Salvador	
San Domingo	Sept. 30, 1924	San Domingo	
Serb-Croat-Slovene State	Aug. 12, 1921		
Siam	Feb. 27, 1922		
South Africa	Aug. 4, 1921		
Spain	Aug. 30, 1921		
Sweden	Feb. 21, 1921	Sweden For five years.	
Switzerland	July 25, 1921	Switzerland Subject to ratification and to the right of referendum. (The Secretary-General of the League of Nations made known by means of a circular letter, dated July 30, 1921, that he had received a declaration from the Swiss Government, definitely ratifying the Optional Clause, the time limit for a referendum having lapsed.)	July 25, 1921 For five years.
Uruguay	Sept. 27, 1921	Uruguay	Sept. 27, 1921
Venezuela	Dec. 2, 1921		

6. RULES OF COURT

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PREAMBLE

The Court,

By virtue of Article 30 of its Statute,[1]

Adopts the present Rules:

CHAPTER I.—THE COURT

HEADING 1.—CONSTITUTION OF THE COURT

Section A.—Judges and Assessors.

ARTICLE 1.

Subject to the provisions of Article 14 of the Statute, the term of office of judges and deputy-judges shall commence on January 1 of the year following their election.[2]

ARTICLE 2.

Judges and deputy-judges elected at an earlier session of the Assembly and of the Council of the League of Nations shall take precedence respectively over judges and deputy-judges elected at a subsequent session. Judges and deputy-judges elected during the same session shall take precedence according to age. Judges shall take precedence over deputy-judges.

National judges chosen from outside the Court, under the terms of Article 31 of the Statute,[3] shall take precedence after deputy-judges in order of age.

The list of deputy-judges shall be prepared in accordance with these principles.

The Vice-President shall take his seat on the right of the President. The other Members of the Court shall take their seats to the right and left of the President in the order laid down above.[4]

[1] See p. 247 *supra*. [2] See p. 31 *supra*. [3] See p. 247 *supra*.

[4] See pp. 37, 50 *supra*. On Jan. 15, 1925, the Court adopted an addition to this rule providing that the retiring President should sit on the right of the President.

ARTICLE 3.

Deputy-judges whose presence is necessary shall be summoned in the order laid down in the list referred to in the preceding Article, that is to say, each of them will be summoned in rotation throughout the list.

Should a deputy-judge be so far from the seat of the Court that, in the opinion of the President, a summons would not reach him in sufficient time, the deputy-judge next on the list shall be summoned ; nevertheless, the judge to whom the summons should have been addressed shall be called upon, if possible, on the next occasion that the presence of a deputy-judge is required.

A deputy-judge who has begun a case shall be summoned again, if necessary out of his turn, in order to continue to sit in the case until it is finished.

Should a deputy-judge be summoned to take his seat in a particular case as a national judge, under the terms of Article 31 of the Statute,[1] such summons shall not be regarded as coming within the terms of the present Article.[2]

ARTICLE 4.

In cases in which one or more parties are entitled to choose a judge *ad hoc* of their nationality, the full Court may sit with a number of judges exceeding eleven.

When the Court has satisfied itself, in accordance with Article 31 of the Statute,[3] that there are several parties in the same interest and that none of them has a judge of its nationality upon the bench, the Court shall invite them, within a period to be fixed by the Court, to select by common agreement a deputy judge of the nationality of one of the parties, should there be one ; or, should there not be one, a judge chosen in accordance with the principles of the above-mentioned Article.

Should the parties have failed to notify the Court of their selection or choice when the time limit expires, they shall be regarded as having renounced the right conferred upon them by Article 31.[4]

ARTICLE 5.

Before entering upon his duties, each member of the Court or judge summoned to complete the Court, under the terms of Article

[1] See p. 247 *supra*.
[2] See p. 32 *supra*.
[3] See p. 247 *supra*.
[4] See pp. 50-51, 247 *supra*.

31 of the Statute,[1] shall make the following solemn declaration in accordance with Article 20 of the Statute :

" I solemnly declare that I will exercise all my powers and duties as a judge honourably and faithfully, impartially and conscientiously."

A special public sitting of the Court may, if necessary, be convened for this purpose.

At the public inaugural sitting held after a new election of the whole Court, the required declaration shall be made first by the President, secondly by the Vice-President, and then by the remaining judges in the order laid down in Article 2.[2]

ARTICLE 6.

For the purpose of applying Article 18 of the Statute,[3] the President, or if necessary the Vice-President, shall convene the judges and deputy-judges. The member affected shall be allowed to furnish explanations. When he has done so the question shall be discussed and a vote shall be taken, the member in question not being present. If the members present are unanimously agreed, the Registrar shall issue the notification prescribed in the above-mentioned Article.[4]

ARTICLE 7.

The President shall take steps to obtain all information which might be helpful to the Court in selecting technical assessors in each case. With regard to the questions referred to in Article 26 of the Statute,[5] he shall, in particular, consult the Governing Body of the International Labour Office.

The assessors shall be appointed by an absolute majority of votes, either by the Court or by the special Chamber which has to deal with the case in question.[6]

ARTICLE 8.

Assessors shall make the following solemn declaration at the first sitting of the Court at which they are present :

" I solemnly declare that I will exercise my duties and powers as an assessor honourably and faithfully, impartially and conscientiously, and that I will scrupulously observe all the provisions of the Statute and of the Rules of Court." [7]

[1] See p. 247 *supra*. [2] See pp. 36, 51, 261 *supra*. [3] See p. 244 *supra*.
[4] See pp. 34-35 *supra*. [5] See pp. 245-246 *supra*. [6] See pp. 44-46 *supra*.
[7] See pp. 44-46 *supra*.

Section B.—The Presidency.

ARTICLE 9.

The election of the President and the Vice-President shall take place at the end of the ordinary session immediately before the normal termination of the period of office of the retiring President and Vice-President.

After a new election of the whole Court, the election of the President and Vice-President shall take place at the commencement of the following session. The President and Vice-President elected in these circumstances shall take up their duties on the day of their election. They shall remain in office until the end of the second year after the year of their election.

Should the President or the Vice-President cease to belong to the Court before the expiration of their normal term of office, an election shall be held for the purpose of appointing a substitute for the unexpired portion of their term of office. If necessary, an extraordinary session of the Court may be convened for this purpose.

The elections referred to in the present Article shall take place by secret ballot. The candidate obtaining an absolute majority of votes shall be declared elected.[1]

ARTICLE 10.

The President shall direct the work and administration of the Court; he shall preside at the meetings of the full Court.[2]

ARTICLE 11.

The Vice-President shall take the place of the President, should the latter be unable to be present, or, should he cease to hold office, until the new President has been appointed by the Court.[3]

ARTICLE 12.

The President shall reside within a radius of ten kilometres from the Peace Palace at The Hague.

The main annual vacation of the President shall not exceed three months.[4]

[1] See p. 37 *supra*.
[2] See p. 36 *supra*.
[3] See p. 36 *supra*.
[4] See p. 38 *supra*.

ARTICLE 13.

After a new election of the whole Court and until such time as the President and Vice-President have been elected, the judge who takes precedence according to the order laid down in Article 2 shall perform the duties of President.

The same principle shall be applied should both the President and the Vice-President be unable to be present, or should both appointments be vacant at the same time.[1]

Section C.—The Chambers.

ARTICLE 14.

The members of the Chambers constituted by virtue of Articles 26, 27 and 29 of the Statute[2] shall be appointed at a meeting of the full Court by an absolute majority of votes, regard being had for the purposes of this selection to any preference expressed by the judges, so far as the provisions of Article 9 of the Statute [3] permit.

The substitutes mentioned in Articles 26 and 27 of the Statute shall be appointed in the same manner. Two judges shall also be chosen to replace any member of the Chamber for summary procedure who may be unable to sit.

The election shall take place at the end of the ordinary session of the Court, and the period of appointment of the members elected shall commence on January 1st of the following year.

Nevertheless, after a new election of the whole Court the election shall take place at the beginning of the following session. The period of appointment shall commence on the date of election and shall terminate, in the case of the Chamber referred to in Article 29 of the Statute, at the end of the same year and, in the case of the Chambers referred to in Articles 26 and 27 of the Statute, at the end of the second year after the year of election.

The Presidents of the Chambers shall be appointed at a sitting of the full Court. Nevertheless, the President of the Court shall, *ex officio*, preside over any Chamber of which he may be elected a member ; similarly, the Vice-President of the Court shall, *ex officio* preside over any Chamber of which he may be elected a member, provided that the President is not also a member.[4]

[1] See p. 37 *supra*.
[2] See pp. 245-247 *supra*.
[3] See p. 242 *supra*.
[4] See pp. 43-47 *supra*.

ARTICLE 15.

The special Chambers for labour cases and for communications and transit cases may not sit with a greater number than five judges.

Except as provided in the second paragraph of the preceding Article, the composition of the Chamber for summary procedure may not be altered.[1]

ARTICLE 16.

Deputy-judges shall not be summoned to complete the special Chambers or the Chamber for summary procedure, unless sufficient judges are not available to complete the number required.

Section D.—The Registry.

ARTICLE 17.

The Court shall select its Registrar from amongst candidates proposed by members of the Court.

The election shall be by secret ballot and by a majority of votes. In the event of an equality of votes, the President shall have a casting vote.

The Registrar shall be elected for a term of seven years commencing on January 1st of the year following that in which the election takes place. He may be re-elected.

Should the Registrar cease to hold his office before the expiration of the term above-mentioned, an election shall be held for the purpose of appointing a successor.[2]

ARTICLE 18.

Before taking up his duties, the Registrar shall make the following declaration at a meeting of the full Court :

"I solemnly declare that I will perform the duties conferred upon me as Registrar of the Permanent Court of International Justice in all loyalty, discretion and good conscience."

The other members of the Registry shall make a similar declaration before the President, the Registrar being present.

ARTICLE 19.

The Registrar shall reside within a radius of ten kilometres from the Peace Palace at The Hague.

[1] See pp. 43-47, 245-247 *supra*.

[2] See p. 38 *supra*.

The main annual vacation of the Registrar shall not exceed two months.[1]

ARTICLE 20.

The staff of the Registry shall be appointed by the Court on proposals submitted by the Registrar.

ARTICLE 21.

The Regulations for the staff of the Registry shall be adopted by the President on the proposal of the Registrar, subject to subsequent approval by the Court.

ARTICLE 22.

The Court shall determine or modify the organization of the Registry upon proposals submitted by the Registrar. On the proposal of the Registrar, the President shall appoint the member of the Registry who is to act for the Registrar in his absence or, in the event of his ceasing to hold his office, until a successor has been appointed.

ARTICLE 23.

The registers kept in the archives shall be so arranged as to give particulars with regard to the following points amongst others :

1. For each case or question, all documents pertaining to it and all action taken with regard to it in chronological order ; all such documents shall bear the same file number and shall be numbered consecutively within the file ;
2. All decisions of the Court in chronological order, with references to the respective files ;
3. All advisory opinions given by the Court in chronological order, with references to the respective files ;
4. All notifications and similar communications sent out by the Court, with references to their respective files.

Indexes kept in the archives shall comprise :

1. A card index of names with necessary references ;
2. A card index of subject matter with like references.

ARTICLE 24.

During hours to be fixed by the President the Registrar shall receive any documents and reply to any enquiries, subject to the

[1] See p. 38 *supra*.

provisions of Article 38 of the present Rules and to the observance of professional secrecy.[1]

ARTICLE 25.

The Registrar shall be the channel for all communications to and from the Court.

The Registrar shall ensure that the date of despatch and receipt of all communications and notifications may readily be verified. Communications and notifications sent by post shall be registered. Communications addressed to the official representatives or to the agents of the parties shall be considered as having been addressed to the parties themselves. The date of receipt shall be noted on all documents received by the Registrar, and a receipt bearing this date and the number under which the document has been registered shall be given to the sender, if a request to that effect be made.

ARTICLE 26.

The Registrar shall be responsible for the archives, the accounts and all administrative work. He shall have the custody of the seals and stamps of the Court. He shall himself be present at all meetings of the full Court and either he, or a person appointed to represent him with the approval of the Court, shall be present at all sittings of the various Chambers; he shall be responsible for drawing up the minutes of the meetings.

He shall further undertake all duties which may be laid upon him by the present Rules.

The duties of the Registry shall be set forth in detail in a List of Instructions to be submitted by the Registrar to the President for his approval.

HEADING 2.—WORKING OF THE COURT.

ARTICLE 27.

In the year following a new election of the whole Court the ordinary annual session shall commence on the fifteenth of January.

If the day fixed for the opening of a session is regarded as a holiday at the place where the Court is sitting, the session shall be opened on the working day following.[2]

[1] See p. 104 *supra*, and p. 272 *infra*.

[2] See p. 39 *supra*.

ARTICLE 28.

The list of cases shall be prepared and kept up to date by the Registrar under the responsibility of the President. The list for each session shall contain all questions submitted to the Court for an advisory opinion and all cases in regard to which the written proceedings are concluded, in the order in which the documents submitting each question or case have been received by the Registrar. If in the course of a session, a question is submitted to the Court or the written proceedings in regard to any case are concluded, the Court shall decide whether such question or case shall be added to the list for that session.[1]

The Registrar shall prepare and keep up to date extracts from the above list showing the cases to be dealt with by the respective Chambers.

The Registrar shall also prepare and keep a list of cases for revision.

ARTICLE 29.

During the sessions the dates and hours of sittings shall be fixed by the President.

ARTICLE 30.

If at any sitting of the full Court it is impossible to obtain the prescribed quorum, the Court shall adjourn until the quorum is obtained.[2]

ARTICLE 31.

The Court shall sit in private to deliberate upon the decision of any case or on the reply to any question submitted to it.

During the deliberation referred to in the preceding paragraph, only persons authorized to take part in the deliberation and the Registrar shall be present. No other person shall be admitted except by virtue of a special decision taken by the Court, having regard to exceptional circumstances.

Every member of the Court who is present at the deliberation shall state his opinion together with the reasons on which it is based.

The decision of the Court shall be based upon the conclusions adopted after final discussion by a majority of the members.

Any member of the Court may request that a question which is

[1] See pp. 40-41 *supra*.

[2] See p. 42 *supra*.

to be voted upon shall be drawn up in precise terms in both the official languages and distributed to the Court. A request to this effect shall be complied with.

CHAPTER II.—PROCEDURE.

HEADING 1.—CONTENTIOUS PROCEDURE.

Section A.—General Provisions.

ARTICLE 32.

The rules contained under this heading shall in no way preclude the adoption by the Court of such other rules as may be jointly proposed by the parties concerned, due regard being paid to the particular circumstances of each case.[1]

ARTICLE 33.

The Court shall fix time limits in each case by assigning a definite date for the completion of the various acts of procedure, having regard as far as possible to any agreement between the parties.

The Court may extend time limits which it has fixed. It may likewise decide in certain circumstances that any proceeding taken after the expiration of a time limit shall be considered as valid.

If the Court is not sitting the powers conferred upon it by this Article shall be exercised by the President, subject to any subsequent decision of the Court.[2]

ARTICLE 34.

All documents of the written proceedings submitted to the Court shall be accompanied by not less than thirty printed copies certified correct. The President may order additional copies to be supplied.[3]

Section B.—Procedure before the Court and before the special Chambers (Articles 26 and 27 of the Statute).

1. INSTITUTION OF PROCEEDINGS.

ARTICLE 35.

When a case is brought before the Court by means of a special agreement, the latter, or the document notifying the Court of the

[1] See pp. 101, 102, 103 *supra*.
[2] See pp. 101-102 *supra*.
[3] See p. 102 *supra*.

agreement, shall mention the addresses selected at the seat of the Court to which notices and communications intended for the respective parties are to be sent.

In all other cases in which the Court has jurisdiction, the application shall include, in addition to an indication of the subject of the dispute and the names of the parties concerned, a succinct statement of facts, an indication of the claim and the address selected at the seat of the Court to which notices and communications are to be sent.

Should proceedings be instituted by means of an application, the first document sent in reply thereto shall mention the address selected at the seat of the Court to which subsequent notices and communications in regard to the case are to be sent.

Should the notice of a special agreement, or the application, contain a request that the case be referred to one of the special Chambers mentioned in Articles 26 or 27 of the Statute,[1] such request shall be complied with, provided that the parties are in agreement.

Similarly, a request to the effect that technical assessors be attached to the Court, in accordance with Article 27 of the Statute,[2] or that the case be referred to the Chamber for summary procedure shall also be granted ; compliance with the latter request is, however, subject to the condition that the case does not refer to any of the questions indicated in Articles 26 and 27 of the Statute.[3]

Article 36.

The Registrar shall forthwith communicate to all members of the Court special agreements or applications which have been notified to him.[4]

II. WRITTEN PROCEEDINGS.

Article 37.

Should the parties agree that the proceedings shall be conducted in French or in English, the documents constituting the written procedure shall be submitted only in the language adopted by the parties.

In the absence of an agreement with regard to the language to be employed, documents shall be submitted in French or in English.

[1] See pp. 245-247 *supra*.
[2] See pp. 47, 120-121, 247 *supra*.
[3] See pp. 98-99 *supra*.
[4] See p. 99 *supra*.

Should the use of a language other than French or English be authorized, a translation into French or into English shall be attached to the original of each document submitted.

The Registrar shall not be bound to make translations of documents submitted in accordance with the above rules.

In the case of voluminous documents the Court, or the President if the Court is not sitting, may, at the request of the party concerned, sanction the submission of translations of portions of documents only.[1]

ARTICLE 38.

The Court, or the President if the Court is not sitting, may, after hearing the parties, order the Registrar to hold the cases and counter-cases of each suit at the disposal of the Government of any State which is entitled to appear before the Court.[2]

ARTICLE 39.

In cases in which proceedings have been instituted by means of a special agreement, the following documents may be presented in the order stated below, provided that no agreement to the contrary has been concluded between the parties :

A case, submitted by each party within the same limit of time ;

A counter-case, submitted by each party within the same limit of time ;

A reply, submitted by each party within the same limit of time.

When proceedings are instituted by means of an application, failing any agreement to the contrary between the parties, the documents shall be presented in the order stated below :

The case by the applicant ;

The counter-case by the respondent ;

The reply by the applicant ;

The rejoinder by the respondent.[3]

ARTICLE 40.

Cases shall contain :

1. A statement of the facts on which the claim is based ;
2. A statement of law ;
3. A statement of conclusions ;

[1] See p. 96 *supra*.

[2] See p. 104 *supra*.

[3] See pp. 102-103 *supra*.

4. A list of the documents in support; these documents shall be attached to the case.

Counter-cases shall contain:

1. The affirmation or contestation of the facts stated in the case;
2. A statement of additional facts, if any;
3. A statement of law;
4. Conclusions based on the facts stated; these conclusions may include counter-claims, in so far as the latter come within the jurisdiction of the Court;
5. A list of the documents in support; these documents shall be attached to the counter-case.[1]

Article 41.

Upon the termination of the written proceedings the President shall fix a date for the commencement of the oral proceedings.[2]

Article 42.

The Registrar shall forward to each of the members of the Court, a copy of all documents in the case as he receives them.[3]

III. ORAL PROCEEDINGS.

Article 43.

In the case of a public sitting, the Registrar shall publish in the Press all necessary information as to the date and hour fixed.[4]

Article 44.

The Registrar shall arrange for the interpretation from French into English and from English into French of all statements, questions and answers which the Court may direct to be so interpreted.

Whenever a language other than French or English is employed, either under the terms of the third paragraph of Article 39 of the Statute or in a particular instance, the necessary arrangements for translation into one of the two official languages shall be made by the party concerned. In the case of witnesses or experts who appear at the instance of the Court, these arrangements shall be made by the Registrar.[5]

[1] See p. 103 *supra*.
[2] See p. 104 *supra*.
[3] See p. 104 *supra*.
[4] See p. 105 *supra*.
[5] See pp. 96-97 *supra*.

ARTICLE 45.

The Court shall determine in each case whether the representatives of the parties shall address the Court before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.[1]

ARTICLE 46.

The order in which the agents, advocates or counsel, shall be called upon to speak shall be determined by the Court, failing an agreement between the parties on the subject.[2]

ARTICLE 47.

In sufficient time before the opening of the oral proceedings, each party shall inform the Court and the other parties of all evidence which it intends to produce, together with the names, Christian names, description and residence of witnesses whom it desires to be heard.

It shall further give a general indication of the point or points to which the evidence is to refer.[3]

ARTICLE 48.

The Court may, subject to the provisions of Article 44 of the Statute, invite the parties to call witnesses, or may call for the production of any other evidence on points of fact in regard to which the parties are not in agreement.[4]

ARTICLE 49.

The Court, or the President should the Court not be sitting, shall, at the request of one of the parties or on its own initiative, take the necessary steps for the examination of witnesses out of Court.[5]

ARTICLE 50.

Each witness shall make the following solemn declaration before giving his evidence in Court:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."

[1] See p. 106 *supra*.
[2] See p. 106 *supra*.
[3] See p. 107 *supra*.
[4] See pp. 108-109 *supra*.
[5] See p. 109 *supra*.

ARTICLE 51.

Witnesses shall be examined by the representatives of the parties under the control of the President. Questions may be put to them by the President and afterwards by the judges.[1]

ARTICLE 52.

The indemnities of witnesses who appear at the instance of the Court shall be paid out of the funds of the Court.[2]

ARTICLE 53.

Any report or record of an enquiry carried out at the request of the Court, under the terms of Article 50 of the Statute,[3] and reports furnished to the Court by experts, in accordance with the same Article, shall be forthwith communicated to the parties.[4]

ARTICLE 54.

A record shall be made of the evidence taken. The portion containing the evidence of each witness shall be read over to him and approved by him.

As regards the remainder of the oral proceedings, the Court shall decide in each case whether verbatim records of all or certain portions of them shall be prepared for its own use.[5]

ARTICLE 55.

The minutes mentioned in Article 47 of the Statute[6] shall in particular include :

1. The names of the judges ;
2. The names of the agents, advocates and counsel ;
3. The names, Christian names, description and residence of witnesses heard ;
4. A specification of other evidence produced ;
5. Any declarations made by the parties ;
6. All decisions taken by the Court during the hearing.

ARTICLE 56.

Before the oral proceedings are concluded each party may present his bill of costs.[7]

[1] See p. 109 *supra*. [2] See p. 109 *supra*. [3] See p. 252 *supra*.
[4] See p. 108 *supra*. [5] See pp. 106-107, 110 *supra*. [6] See p. 252 *supra*.
[7] See p. 110 *supra*.

IV. INTERIM PROTECTION.

ARTICLE 57.

When the Court is not sitting, any measures for the preservation in the meantime of the respective rights of the parties shall be indicated by the President.

Any refusal by the parties to conform to the suggestions of the Court or of the President, with regard to such measures, shall be placed on record.[1]

V. INTERVENTION.

ARTICLE 58.

An application for permission to intervene, under the terms of Article 62 of the Statute, must be communicated to the Registrar at latest before the commencement of the oral proceedings.

Nevertheless the Court may, in exceptional circumstances, consider an application submitted at a later stage.[2]

ARTICLE 59.

The application referred to in the preceding Article shall contain :

1. A specification of the case in which the applicant desires to intervene ;
2. A statement of law and of fact justifying intervention ;
3. A list of the documents in support of the application ; these documents shall be attached.

Such application shall be immediately communicated to the parties, who shall send to the Registrar any observations which they may desire to make within a period to be fixed by the Court, or by the President should the Court not be sitting.[3]

ARTICLE 60.

Any State desiring to intervene, under the terms of Article 63 of the Statute, shall inform the Registrar in writing at latest before the commencement of the oral proceedings.

The Court, or the President if the Court is not sitting, shall take the necessary steps to enable the intervening State to inspect the documents in the case, in so far as they relate to the interpretation

[1] See p. 100 *supra*.

[2] See p. 111 *supra*.

[3] See pp. 111 *supra*.

of the convention in question, and to submit its observations thereon to the Court.[1]

VI. AGREEMENT.

Article 61.

If the parties conclude an agreement regarding the settlement of the dispute and give written notice of such agreement to the Court before the close of the proceedings, the Court shall officially record the conclusion of the agreement.

Should the parties by mutual agreement notify the Court in writing that they intend to break off proceedings, the Court shall officially record the fact and proceedings shall be terminated.[2]

VII. JUDGMENT.

Article 62.

The judgment shall contain :

1. The date on which it is pronounced ;
2. The names of the judges participating ;
3. The names and style of the parties ;
4. The names of the agents of the parties ;
5. The conclusions of the parties ;
6. The matters of fact ;
7. The reasons in point of law ;
8. The operative provisions of the judgment ;
9. The decision, if any, referred to in Article 64 of the Statute.[3]

The opinions of judges who dissent from the judgment shall be attached thereto should they express a desire to that effect.[4]

Article 63.

After having been read in open Court the text of the judgment shall forthwith be communicated to all parties concerned and to the Secretary-General of the League of Nations.[5]

Article 64.

The judgment shall be regarded as taking effect on the day on which it is read in open Court, in accordance with Article 58 of the Statute.[6]

[1] See pp. 111-112 *supra*.
[2] See pp. 113-114 *supra*.
[3] See p. 254 *supra*.
[4] See pp. 114-117 *supra*.
[5] See p. 117 *supra*.
[6] See pp. 117, 253 *supra*.

ARTICLE 65.

A collection of the judgments of the Court shall be printed and published under the responsibility of the Registrar.[1]

VIII. REVISION.

ARTICLE 66.

Application for revision shall be made in the same form as the application mentioned in Article 40 of the Statute.

It shall contain :

1. The reference to the judgment impeached ;
2. The fact on which the application is based ;
3. A list of the documents in support ; these documents shall be attached.

It shall be the duty of the Registrar to give immediate notice of an application for revision to the other parties concerned. The latter may submit observations within a time limit to be fixed by the Court, or by the President should the Court not be sitting.

If the judgment impeached was pronounced by the full Court, the application for revision shall also be dealt with by the full Court. If the judgment impeached was pronounced by one of the Chambers mentioned in Articles 26, 27 or 29 of the Statute, the application for revision shall be dealt with by the same Chamber. The provisions of Article 13 of the Statute shall apply in all cases.

If the Court, under the third paragraph of Article 61 of the Statute, makes a special order rendering the admission of the application conditional upon previous compliance with the terms of the judgment impeached, this condition shall be immediately communicated to the applicant by the Registrar, and proceedings in revision shall be stayed pending receipt by the Registrar of proof of previous compliance with the original judgment and until such proof shall have been accepted by the Court.[2]

Section C.—Summary Procedure.

ARTICLE 67.

Except as provided under the present section, the rules for procedure before the full Court shall apply to summary procedure.[3]

[1] See p. 117 *supra*.

[2] See pp. 118-119 *supra*.

[3] See p. 121 *supra*.

ARTICLE 68.

Upon receipt by the Registrar of the document instituting proceedings in a case which, by virtue of an agreement between the parties, is to be dealt with by summary procedure, the President shall convene as soon as possible the Chamber referred to in Article 29 of the Statute.[1]

ARTICLE 69.

The proceedings are opened by the presentation of a case by each party. These cases shall be communicated by the Registrar to the members of the Chamber and to the opposing party.

The cases shall contain reference to all evidence which the parties may desire to produce.

Should the Chamber consider that the cases do not furnish adequate information, it may, in the absence of an agreement to the contrary between the parties, institute oral proceedings. It shall fix a date for the commencement of the oral proceedings.

At the hearing, the Chamber shall call upon the parties to supply oral explanations. It may sanction the production of any evidence mentioned in the cases.

If it is desired that witnesses or experts whose names are mentioned in the case should be heard, such witnesses or experts must be available to appear before the Chamber when required.[2]

ARTICLE 70.

The judgment is the judgment of the Court rendered in the Chamber of summary procedure. It shall be read at a public sitting of the Chamber.[3]

HEADING 2.—ADVISORY PROCEDURE.

ARTICLE 71.

Advisory opinions shall be given after deliberation by the full Court.

The opinions of dissenting judges may, at their request, be attached to the opinion of the Court.[4]

[1] See p. 120 *supra*.

[2] See pp. 120-121 *supra*.

[3] See p. 121 *supra*.

[4] See pp. 121-122 *supra*.

ARTICLE 72.

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.[1]

ARTICLE 73.

The Registrar shall forthwith give notice of the request for an advisory opinion to the members of the Court, and to the Members of the League of Nations, through the Secretary-General of the League, and to the States mentioned in the Annex to the Covenant.

Notice of such request shall also be given to any international organizations which are likely to be able to furnish information on the question.[2]

ARTICLE 74.

Any advisory opinion which may be given by the Court and the request in response to which it was given, shall be printed and published in a special collection for which the Registrar shall be responsible.[3]

HEADING 3.—ERRORS.

ARTICLE 75.

The Court, or the President if the Court is not sitting, shall be entitled to correct an error in any order, judgment or opinion, arising from a slip or accidental omission.[4]

Done at The Hague, the twenty-fourth day of March, one thousand nine hundred and twenty-two.

(*s.*) LODER,
President.

(*s.*) Å. HAMMARSKJÖLD,
Registrar.

[1] See pp. 122-123 *supra*.
[2] See pp. 123-124 *supra*.
[3] See p. 125 *supra*.
[4] See p. 125 *supra*.

ANNEXES

I.—ANNEX TO ARTICLE 2.

LIST OF JUDGES AND DEPUTY JUDGES IN ORDER OF PRECEDENCE.[1]

Judges:

M. HUBER, *President* [Switzerland].
M. WEISS, *Vice-President* [France].
LORD FINLAY [Great Britain].
M. LODER [Netherlands].
M. NYHOLM [Denmark].
MR. MOORE [U.S.A.].
M. DE BUSTAMENTE [Cuba].
M. ALTAMIRA [Spain].
M. ODA [Japan].
M. ANZILOTTI [Italy].
M. PESSOA [Brazil].

Deputy-Judges:

M. YOVANOVITCH [Serb-Croat-Slovene State].
M. BEICHMANN [Norway].
M. NEGULESCO [Roumania].
M. WANG-CHUNG-HUI [China].

The judges and deputy-judges are elected for nine years. The period of office of the judges and deputy-judges, whose names appear above, commenced on January 1, 1922.

The President and Vice-President are elected for three years. The period of office of the President and Vice-President, whose names appear above, commenced on January 1, 1925.

II.—ANNEX TO ARTICLE 14.

COMPOSITION OF THE CHAMBERS.

CHAMBER OF SUMMARY PROCEDURE.

Members:

M. HUBER, *President*.
M. WEISS.
M. LODER.

Substitutes:

LORD FINLAY.
M. ALTAMIRA.

The period of appointment of the members of the Chamber of Summary Procedure terminates on December 31, 1925.

[1] The indication of the nationality of the Members of the Court is given for convenience of reference; it forms no part of the Rules.

CHAMBER FOR LABOUR CASES.

Members :

M. HUBER, *President*.
LORD FINLAY.
M. DE BUSTAMENTE.
M. ALTAMIRA.
M. ANZILOTTI.

Substitutes :

M. NYHOLM.
MR. MOORE.

The period of appointment of the members of the Chamber for Labour Cases terminates on December 31, 1927.

CHAMBER FOR TRANSIT AND COMMUNICATION CASES.

Members :

M. WEISS, *President*.
M. NYHOLM.
MR. MOORE.
M. ODA.
M. PESSOA.

Substitutes :

M. ANZILOTTI.
M. HUBER.

The period of appointment of the members of the Chamber for Transit and Communication Cases terminates on December 31, 1927.

III.—ANNEX TO ARTICLE 17.

THE REGISTRAR OF THE COURT.

Registrar : M. ÅKE HAMMARSKJÖLD.

The Registrar is elected for seven years.

The period of office of the Registrar, whose name appears above, commenced on February 1, 1922.

IV.—ANNEX TO ARTICLE 24.

INTERVIEWS WITH THE REGISTRAR.

The Registrar may be seen between the hours of 2 p.m. and 4 p.m. on all working days except Saturday, at the Peace Palace at The Hague.

ADDRESSES OF THE COURT.

The postal address of the Court is :

THE PEACE PALACE,
The Hague.

The telegraphic address is :

" INTERCOURT THE HAGUE."

7. REPORT TO AND RESOLUTION OF THE ASSEMBLY OF THE LEAGUE AS TO SALARIES AND ALLOWANCES OF JUDGES[1]

Report to the Assembly by M. H. Lafontaine.[2]

The fixing of the salaries of the members of the Permanent Court of International Justice was referred by the Council to the Third Committee. After detailed discussion, the following principles have been approved. They are based on Article 32 of the Statute :

The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31[3] shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

The Committee was of opinion that the annual remuneration of all ordinary judges should be fixed at a minimum of fifteen thousand (15,000) Dutch florins. The special annual allowance assigned to the President was fixed at 45,000 florins, which brings his total remuneration to 60,000 florins per year.

As the other members of the Court are not obliged to live at the seat of the Court throughout the whole year, it was considered that the allowance assigned to them should be proportional to the length

[1] See pp. 13, 51-52 *supra.*

[2] Approved by the Assembly on December 18, 1920. See *Records of First Assembly, Plenary Meetings*, pp. 747-748.

[3] See pp. 247-248 *supra.*

of time they would spend at the seat of the Court. In the consideration of this allowance two points of view were advanced; they were fixed not merely on the basis of the period of duty, but also according to the length of residence at The Hague.

The allowance per day for the period of duty has consequently been fixed for each ordinary judge at 100 florins and for the Vice-President at 150 florins. As for the deputy-judges, it was considered that a larger duty-allowance should be granted them. The ordinary judges receive an annual salary of 15,000 florins, and it must be taken into consideration that the deputy-judges must hold themselves at the disposal of the Court, and may be called upon to undertake a more or less unforeseen journey and to abandon their profession or the posts which they hold in their countries of origin. As they receive no annual salary, it seems just to compensate them by raising their daily allowance to 150 florins.

The subsistence allowance has been fixed for all the members of the Court, except the President, who has a different fixed allowance, at 50 florins per day.

The maximum indemnity for the different members of the Court would thus, calculating the days of session in each year at 200 (Sundays and vacations deducted), amount to 30,000 florins for the Vice-President, 20,000 for ordinary judges and 30,000 for deputy-judges.

To ensure an equal position for all the members of the Court of International Justice, by neutralizing the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay.

With regard to travelling expenses, the Committee is of opinion that the expenses of moving the near relatives of members of the Court should be defrayed by the League of Nations.

Finally, the payment of salaries and allowances and the reimbursement for expenses shall take place on the basis of accounts approved by the President.

The table attached to the resolution set out below will give a clear idea of the remuneration allotted to each class of member of the Court.

RESOLUTION.[1]

The Assembly of the League of Nations, in conformity with the provisions of Article 32 of the Statute,[2] fixes the salaries and allowances of members of the Permanent Court of International Justice as follows:

	Dutch florins.	
President :		
Annual salary - - - -	15,000	
Special allowance - - -	45,000	
Total - -	60,000	
Vice-President :		
Annual salary - - - -	15,000	
Duty allowance (200 × 150) -	30,000	(maximum)
Total - -	45,000	
Ordinary Judges :		
Annual salary - - - -	15,000	
Duty allowance (200 × 100) -	20,000	(maximum)
Total - -	35,000	
Deputy-Judges :		
Duty allowance (200 × 150) -	30,000	(maximum)

Duty allowances are payable from the day of departure until the return of the beneficiary.

An additional allowance of 50 florins per day is assigned for each day of actual presence at The Hague to the Vice-President and to the ordinary and deputy-judges.

Allowances and salaries are free of all tax.

8. INDEMNITIES PAYABLE TO NATIONAL JUDGES AND NATIONAL ASSESSORS[3]

RESOLUTION ADOPTED BY THE ASSEMBLY AT ITS MEETING HELD ON SEPTEMBER 23, 1922.

The Assembly of the League of Nations,

Having considered proposals made to it by the Council, in accordance with Article 32 of the Statute[2] of the Permanent Court of International Justice,

[1] Adopted by the Assembly on December 18, 1920. See *Records of First Assembly, Plenary Meetings*, pp. 747-748.

[2] Set out on pp. 248 and 283 *supra*.

[3] See pp. 51-52 *supra*.

Accepts the proposals of the Council, subject to certain changes as to the amounts payable, and decides as follows :

1. A judge sitting in the Permanent Court of International Justice, who has been selected in accordance with Article 31 of the Statute[1] of the Court and who is not a deputy-judge, shall be granted from the funds of the Court a daily duty allowance and a daily subsistence allowance and repayment of his travelling expenses, according to the rates and conditions applicable to a deputy-judge taking part in a session of the Court.

2. Technical assessors summoned to assist the Court in accordance with the provisions of Article 26 of the Statute[2] of the Court shall be granted from the funds of the Court a daily subsistence allowance of 50 florins during the period for which their functions oblige them to reside at the place at which the session is held, unless they habitually reside there, or, if they reside at such place, a daily subsistence allowance of 25 florins ; and, further, the necessary travelling expenses of these assessors shall be refunded to them out of the funds of the Court.

3. Technical assessors sitting in cases connected with transit and communications, and, in particular, cases coming under Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding parts of the other Treaties of Peace referred to in Article 27 of the Statute[3] of the Court, shall be treated in the same manner as the assessors referred to in paragraph 2 above if they sit by virtue of a decision of the Court. If the technical assessors sit at the request of the parties, the allowances and travelling expenses shall be borne by the parties in accordance with rules to be made by the Court.[4]

9. RULES ADOPTED BY THE COURT CONCERNING THE INDEMNITIES OF ASSESSORS SITTING AT THE DESIRE OF THE PARTIES[5]

1. Technical assessors sitting to assist the judges at the request of the parties in accordance with Article 27, paragraph 2, of the Statute, and Article 35, paragraph 5, of the Rules of Court, shall receive a daily subsistence allowance of 50 florins during the period for which their functions oblige them to reside at the place at which

[1] See pp. 247-248 *supra*. [2] See pp. 245-246 *supra*. [3] See pp. 246-247 *supra*.
[4] These rules are those here set out as Appendix No. 9. [5] See p. 46 *supra*.

the session is held, unless they habitually reside there, or, if they reside at such place, a daily subsistence allowance of 25 florins; and further, the necessary travelling expenses of these assessors shall be refunded to them

2. The sum total of these subsistence allowances and travelling expenses shall, in each particular case, be fixed by the Court and paid by the Registry, according to the principles governing the fixing of allowances and the refunding of travelling expenses of assessors sitting either as of right, under Article 26 of the Statute, or by virtue of a decision of the Court.[1]

3. The sums so paid shall be refunded by the parties in equal shares. Such repayments shall be made after judgment is pronounced.

10. RESOLUTION OF THE COUNCIL OF THE LEAGUE LAYING DOWN THE CONDITIONS UNDER WHICH THE COURT IS OPEN TO STATES NOT MEMBERS OF THE LEAGUE, AND STATES NOT MENTIONED IN THE ANNEX TO THE COVENANT[2]

The Council of the League of Nations,

In virtue of the powers conferred upon it by Article 35, paragraph 2, of the Statute[3] of the Permanent Court of International Justice, and subject to the provisions of that Article,

Resolves:

1. The Permanent Court of International Justice shall be open to a State which is not a Member of the League of Nations or mentioned in the Annex to the Covenant of the League, upon the following condition, namely: that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Covenant of the League of Nations and with the terms and subject to the conditions of the Statute and Rules of Procedure of the Court, and undertakes to carry out in full good faith the decision or decisions of the Court and not to resort to war against a State complying therewith.

[1] See Appendix No. 8, p. 285 *supra*.

[2] Adopted by the Council on May 17, 1922. See pp. 56-57 *supra*.

[3] See p. 249 *supra*.

2. Such declaration may be either particular or general.

A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen.

A general declaration is one accepting the jurisdiction generally in respect of all disputes, or of a particular class or classes of disputes which have already arisen or which may arise in the future.

A State in making such a general declaration may accept the jurisdiction of the Court as compulsory, *ipso facto*, and without special convention, in conformity with Article 36 of the Statute[1] of the Court; but such acceptance may not, without special convention, be relied upon *vis-a-vis* Members of the League of Nations or States mentioned in the Annex to the Covenant which have signed or may hereafter sign the "optional clause" provided for by the additional protocol of December 16, 1920.[2]

3. The original declarations made under the terms of this Resolution shall be kept in the custody of the Registrar of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all Members of the League of Nations and States mentioned in the Annex to the Covenant, and to such other States as the Court may determine, and to the Secretary-General of the League of Nations.

4. The Council of the League of Nations reserves the right to rescind or amend this Resolution by a Resolution which shall be communicated to the Court; and on the receipt of such communication by the Registrar of the Court, and to the extent determined by the new Resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.

5. All questions as to the validity or the effect of a declaration made under the terms of this Resolution shall be decided by the Court.

[1] See p. 249 *supra*.

[2] See pp. 255-256 *supra*.

PART II. PREPARATORY DOCUMENTS

11. DRAFT SCHEME FOR THE ESTABLISHMENT OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, MENTIONED IN ARTICLE 14 OF THE COVENANT OF THE LEAGUE OF NATIONS, PRESENTED TO THE COUNCIL OF THE LEAGUE BY THE ADVISORY COMMITTEE OF JURISTS

Article 1.

A Permanent Court of International Justice, to which parties shall have direct access, is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by The Hague Conventions of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I.—ORGANIZATION OF THE COURT

Article 2.

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality, from amongst persons of high moral character, who possess the qualifications required, in their respective countries, for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3.

The Court shall consist of 15 members : 11 judges and 4 deputy-judges. The number of judges and deputy-judges may be hereafter increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of 15 judges and 6 deputy-judges.

Article 4.

The members of the Court shall be elected by the Assembly and the Council from a list of persons nominated by the national groups

in the Court of Arbitration, in accordance with the following provisions.

ARTICLE 5.

At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the members of the Court of Arbitration, belonging to the States mentioned in the Annex to the Covenant or to the States which shall have joined the League subsequently, inviting them to undertake, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than two persons; the nominees may be of any nationality.

ARTICLE 6.

Before making these nominations, each national group is hereby recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

ARTICLE 7.

The Secretary-General of the League of Nations shall prepare a list, in alphabetical order, of all the persons thus nominated. These persons only shall be eligible for appointment, except as provided in Article 12, paragraph 2.

The Secretary-General shall submit this list to the Assembly and to the Council.

ARTICLE 8.

The Assembly and the Council shall proceed to elect by independent voting first the judges and then the deputy-judges.

ARTICLE 9.

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

ARTICLE 10.

Those candidates who obtain an absolute majority of votes in the Assembly and the Council shall be considered as elected.

In the event of more than one candidate of the same nationality being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

ARTICLE 11.

If, after the first sitting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third sitting shall take place.

ARTICLE 12.

If after the third sitting one or more seats still remain unfilled, a Joint Conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Committee is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations made by the Court of Arbitration.

If the Joint Conference is not successful in procuring an election, those members of the Court who have already been appointed shall, within a time limit to be arranged by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

ARTICLE 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall complete any cases which they may have begun.

ARTICLE 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member the period of whose appointment has not expired will hold the appointment for the remainder of his predecessor's term.

ARTICLE 15.

Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court, having regard first to the order in time of each election and secondly to age.

ARTICLE 16.

The exercise of any function which belongs to the political direction, national or international, of States, by the members of the

Court during their terms of office is declared incompatible with their judicial duties.

Any doubt upon this point is settled by the decision of the Court.

ARTICLE 17.

No member of the Court can act as agent, counsel or advocate in any case of an international nature.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a Commission of Inquiry, or in any other capacity.

Any doubt upon this point is settled by the decision of the Court.

ARTICLE 18.

A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

When this happens a formal notification shall be given to the Secretary-General.

This notification makes the place vacant.

ARTICLE 19.

The members of the Court, when outside their own country, shall enjoy the privileges and immunities of diplomatic representatives.

ARTICLE 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ARTICLE 21.

The Court shall elect its President and Vice-President for three years : they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be considered incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ARTICLE 22.

The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

ARTICLE 23.

A session shall be held every year.

Unless otherwise provided by Rules of Court, this session shall

begin on the 15th June, and shall continue for so long as may be necessary to complete the cases on the list.

The President may summon an extraordinary meeting of the Court whenever necessary.

ARTICLE 24.

If, for some special reason, a member of the Court considers that he cannot take part in the decision of a particular case, he shall so inform the President.

If, for some special reason, the President considers that one of the members of the Court should not sit on a particular case, he shall give notice to the member concerned.

In the event of the President and the member not agreeing as to the course to be adopted in any such case, the matter shall be settled by the decision of the Court.

ARTICLE 25.

The full Court shall sit except when it is expressly provided otherwise.

If 11 judges cannot be present, deputy-judges shall be called upon to sit, in order to make up this number.

If, however, 11 judges are not available, a quorum of 9 judges shall suffice to constitute the Court.

ARTICLE 26.

With a view to the speedy despatch of business the Court shall form, annually, a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ARTICLE 27.

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

ARTICLE 28.

Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges, a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates by some national group in the Court of Arbitration.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall,

for the purpose of the preceding provisions, be reckoned as one party only.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

Article 29.

The judges shall receive an annual salary to be determined by the Assembly of the League of Nations upon the proposal of the Council. This salary must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

Deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 28 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

A special regulation shall provide for the pensions to which the judges and Registrar shall be entitled.

Article 30.

The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II.—COMPETENCE OF THE COURT

Article 31.

The Court shall have jurisdiction to hear and determine suits between States.

Article 32.

The Court shall be open of right to the States mentioned in the Annex to the Covenant, and to such others as shall subsequently enter the League of Nations.

Other States may have access to it.

The conditions under which the Court shall be open of right or accessible to States which are not Members of the League of Nations shall be determined by the Council, in accordance with Article 17 of the Covenant.

ARTICLE 33.

When a dispute has arisen between States, and it has been found impossible to settle it by diplomatic means, and no agreement has been made to choose another jurisdiction, the party complaining may bring the case before the Court. The Court shall, first of all, decide whether the preceding conditions have been complied with; if so, it shall hear and determine the dispute according to the terms and within the limits of the next Article.

ARTICLE 34.

Between States which are Members of the League of Nations, the Court shall have jurisdiction (and this without any special convention giving it jurisdiction) to hear and determine cases of a legal nature, concerning:

(*a*) The interpretation of a treaty;
(*b*) Any question of international law;
(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;
(*d*) The nature or extent of reparation to be made for the breach of an international obligation;
(*e*) The interpretation of a sentence passed by the Court.

The Court shall also take cognizance of all disputes of any kind which may be submitted to it by a general or particular convention between the parties.

In the event of a dispute as to whether a certain case comes within any of the categories above mentioned, the matter shall be settled by the decision of the Court.

ARTICLE 35.

The Court shall, within the limits of its jurisdiction as defined in Article 34, apply in the order following:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. International custom, as evidence of a general practice, which is accepted as law;
3. The general principles of law recognized by civilized nations;
4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

ARTICLE 36.

The Court shall give an advisory opinion upon any question or dispute of an international nature referred to it by the Council or Assembly.

When the Court shall give an opinion on a question of an international nature which does not refer to any dispute that may have

arisen, it shall appoint a special Commission of from three to five members.

When it shall give an opinion upon a question which forms the subject of an existing dispute, it shall do so under the same conditions as if the case had been actually submitted to it for decision.

CHAPTER III.—PROCEDURE

Article 37.

The official language of the Court shall be French.

The Court may, at the request of the contesting parties, authorize another language to be used before it.

Article 38.

A State desiring to have recourse to the Court shall lodge a written application addressed to the Registrar.

The application shall indicate the subject of the dispute, and name the contesting parties.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

Article 39.

If the dispute arises out of an act which has already taken place or which is imminent, the Court shall have the power to suggest, if it considers that circumstances so require, the provisional measures that should be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

Article 40.

The parties shall be represented by Agents.

They may have Counsel or Advocates to plead before the Court.

Article 41.

The procedure shall consist of two parts : written and oral.

Article 42.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies ; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

ARTICLE 43.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ARTICLE 44.

The proceedings shall be under the direction of the President, or in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ARTICLE 45.

The hearing in Court shall be public, unless the Court, at the written request of one of the parties, accompanied by a statement of his reasons, shall otherwise decide.

ARTICLE 46.

Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ARTICLE 47.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ARTICLE 48.

The Court, may, even before the hearing begins, call upon the agents to produce any document, or to supply to the Court any explanations. Any refusal shall be recorded.

ARTICLE 49.

The Court may, at any time, entrust any individual, bureau, commission or other body that it may select, with the task of carrying out an inquiry or giving an expert opinion.

ARTICLE 50.

During the hearing in Court, the judges may put any questions considered by them to be necessary, to the witnesses, agents, experts, advocates or counsel. The agents, advocates and counsel shall have the right to ask, through the President, any questions that the Court considers useful.

ARTICLE 51.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ARTICLE 52.

Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 33 and 34, but also that the claim is supported by substantial evidence and well founded in fact and law.

ARTICLE 53.

When the agents, advocates and counsel have, subject to the control of the Court, presented all the evidence, and taken all other steps that they consider advisable, the President shall declare the case closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

ARTICLE 54.

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

ARTICLE 55.

The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

ARTICLE 56.

If the judgment given does not represent, wholly or in part, the unanimous opinion of the judges, the dissenting judges shall be entitled to have the fact of their dissent or reservations mentioned in it. But the reasons for their dissent or reservations shall not be expressed in the judgment.

ARTICLE 57.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

ARTICLE 58.

The judgment is final and without appeal. In the event of uncertainty as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ARTICLE 59.

An application for revision of a judgment can be made only when it is based upon the discovery of some new fact, of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

No application for revision may be made after the lapse of five years from the date of the sentence.

ARTICLE 60.

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ARTICLE 61.

Whenever the construction of a convention in which States, other than those concerned in the case, are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings : but if it uses this right, the construction given by the judgment will be as binding upon it as upon the original parties to the dispute.

ARTICLE 62.

Unless otherwise decided by the Court, each party shall bear its own costs.

12. REPORT BY M. LÉON BOURGEOIS, PRESENTED TO AND ADOPTED BY THE COUNCIL OF THE LEAGUE OF NATIONS, AT ITS MEETING AT BRUSSELS, ON OCTOBER 27, 1920

GENTLEMEN,

At the last meeting of the Council of the League of Nations at San Sebastian you were good enough to approve the terms of the

Report [1] which I presented on the subject of the draft scheme for the establishment of a Permanent Court of International Justice, prepared by the Committee of Jurists which you appointed for this purpose.

In order to mark the starting-point of our deliberations to-day, I will read you some lines of my San Sebastian Report :

" I have indicated, apart from these provisions in respect of which no serious difficulty seems to arise, the points which have specially arrested the attention of the Jurists at The Hague, and which will have to be thoroughly discussed. Such a discussion cannot take place to-day. We must postpone till one of our forthcoming meetings the final consideration of the draft, but in the meantime :

" 1. We could circulate to all the Members of the League, for their information, a copy of the draft Statute of The Hague and of the Report which explains its provisions.

" 2. We could charge one from among ourselves, who should keep in touch with his colleagues, to prepare a preliminary Report as a basis for our final decision.

" We cannot forget that the provisions of Article 14 of the Covenant impose upon us the formal duty of preparing a plan for the establishment of a Permanent Court of International Justice and of submitting it to the Members of the League. It is essential that before the General Assembly meets, the Council should have adopted a definite position."

You decided, in agreement with what I proposed, to forward to the Governments of the States Members of the League of Nations the scheme prepared by the Advisory Committee and the Report presented to this Committee by its Rapporteur together with a covering letter, the text of which is reproduced in the Annex ; and you instructed me to prepare, in collaboration with the other members of the Council, a preliminary report on the scheme of the Committee to serve as a basis for the final opinion of the Council.

Sir Eric Drummond signed these covering letters, in which he pointed out that the Jurisconsults of The Hague had adopted their report unanimously, and added :

" Doubtless the agreement was not arrived at without difficulty. Variety of opinions, even among the most competent experts, is inevitable on a subject so perplexing and complicated. Some mutual concessions are therefore necessary if the failure of thirteen years ago is not to be repeated. The Council would regard an irreconcilable difference of opinion on the merits of the scheme as an international misfortune of the gravest kind. It would mean that the League was publicly compelled to admit its incapacity to

[1] This Report, which is of a preliminary character, is printed in the *Records of the First Assembly, Meetings of Committees*, pp. 464-468.

carry out one of the most important of the tasks which it was invited to perform. The failure would be great, and probably irreparable ; for if agreement proves impossible under circumstances apparently so favourable, it is hard to see how and when the task of securing it will be successfully resumed.

" It is in the spirit indicated by these observations that the Council on their part propose to examine the project submitted to them by the Committee of Jurists ; and they trust that in the same spirit the Members of the League will deal with this all-important subject when the Council brings the recommendations before the Assembly."

The draft scheme and the Report were forwarded to the various Governments in order that you might have the benefit in your deliberations of the suggestions which might seem of interest to you in this purely unofficial discussion.

A certain number of Governments have already forwarded us their remarks : the Swedish and Norwegian Governments among those Powers not represented on the Council ; and among the others, the Belgian, British, French and Italian Governments. Some of these replies were drawn up in writing, others, such as those of the Belgian and British Governments, were presented orally or in a Note which was communicated to you during the present Meeting.

The observations which we have received are of very varying importance. First of all, there are a great number of observations on points of detail concerning the actual wording of the Articles ; I am of the opinion that this question is not really the object of the Council's deliberations. We are not an Assembly of Jurisconsults, and in the opinion of the public our views could not, in purely technical matters, be of equal weight with those of the eminent jurists who have come to a unanimous agreement at The Hague. Our task is to examine from the point of view of principle the scheme prepared at The Hague, and to limit our questions or our objections to the fundamental points of the system proposed.

The following are the points which I propose that you should consider :

1. The obligatory character of the jurisdiction.
2. The retrospective competence of the Court when the interpretation of Treaties concluded prior to the establishment of the Court is in question.
3. Can the Court be considered as competent to deal with Prize Court matters ?
4. The question of National Judges : when a country is not represented on the Tribunal, should a Judge of this country be called upon to sit on the Tribunal in order to establish equilibrium between the parties in dispute, or, on the contrary, should a National Judge be eliminated ?
5. Relations between the new Court which we are establishing and the supreme organization that the General Assembly

and its Council constitute under the terms of the Covenant itself.

6. Position of the Judges: their salaries and allowances, the inconsistencies which may exist between the office of Judge of the International Court and other national and international duties.
7. Appointment of the candidates.
8. The right of intervention in its various aspects, and in particular the question whether the fact that the principle implied in a judgment may affect the development of international law in a way which appears undesirable to any particular State may constitute for it a sufficient basis for any kind of intervention in order to impose the contrary views held by it with regard to this principle.
9. Choice of the language which shall be the official language of the Court.

These, Gentlemen, are the essential points. I will now deal with them in turn, taking into account the observations which have been drawn up by the various Governments.

1. Obligatory Character of the Jurisdiction.

This is a question of the interpretation of Article 34 of the scheme of The Hague Jurisconsults. This Article runs as follows:

"Between States Members of the League of Nations, the Court will, without special Convention, decide disputes of a Judicial nature which concern:

(*a*) The interpretation of a Treaty;
(*b*) Any point in International Law;
(*c*) Any fact, which if it were established would constitute a violation of international agreement;
(*d*) The nature or extent of the reparations due for the violation of an international agreement;
(*e*) The interpretation of a sentence pronounced by the Court.

"The Court will also deal with all disputes of whatever nature which are submitted to it as the result of a Convention, whether general or special, between the parties.

"In case of doubt as to whether a dispute comes within the categories mentioned above, the Court shall decide."

No difficulty arises when there exists between the parties a general or special Convention declaring the Court to be competent. But it remains to be decided whether we can set up a Court of Justice entitled to consider itself competent to give a decision where no special Convention exists. The Jurists at The Hague decided in the affirmative. They considered, in fact, that if the Court is made competent by agreement between the parties—a fact which is incontestable—it is difficult to see why this agreement should not

be established by a general Convention after discussion by the League of Nations, instead of by a special Convention arrived at by two or more parties.

If the Assembly of the League of Nations approves of provisions which establish a Court of Justice and which imply that the competence of this Court in certain matters is binding on all, would not the ratification by the different States of these provisions adopted by the League of Nations be equivalent to a Convention giving to the Court of Justice a compulsory jurisdiction in matters mentioned in Article 34 of the draft Scheme ?

If this view advanced by the Jurisconsults at The Hague is adopted without modification, a considerable advance has certainly been made, in view of the terms of Article 34. What must be understood, then, by the expression " any point of international law " ? Even if the States admitted the compulsory jurisdiction in the cases definitely laid down in the Article, will they consent to go so far as to admit that any question of international law may be submitted to the Court ? Objections of this nature have been raised by several Governments, which have forwarded us their remarks on the draft scheme.

The innovation involved in The Hague scheme may be summed up as follows :

The decision of the Permanent Court is being substituted for the decision which the Council should take on the question whether diplomatic methods of settlement have or have not been exhausted between the two parties before their dispute comes before the Council, and a decision of the Permanent Court is substituted for the free choice allowed to the parties by the Covenant with regard to the question whether they shall lay their dispute before the Court, before another international Tribunal, or before the Council of the League of Nations.

This freedom of choice is given to Members of the League of Nations by Article 12 of the Covenant.

We do not think it necessary to discuss here the advantages which would result from the system of compulsory jurisdiction proposed by the Committee of Jurists with regard to the good administration of international justice and the development of the Court's authority. But as in reality, a modification in Articles 12 and 13 of the Covenant is here involved, the Council will, no doubt, consider that it is not its duty, at the moment when the General Assembly of the League of Nations is about to meet for the first time, to take the initiative with regard to proposed alterations in the Covenant, whose observance and safe keeping have been entrusted to it. If, on a particular point, whose importance is clear to everyone, it were to propose such alterations, it would also be obliged to express its views with regard to many other alterations in the Covenant, which certain Governments have already stated that they intend to lay before the Assembly.

At the present moment it is most important in the interests of the authority of the League of Nations that differences of opinion should not arise at the very outset with regard to the essential rules laid down in the Covenant of the 28th June, 1919.

I propose, therefore, that we should adopt as the starting-point of our subsequent deliberations the following resolutions :

Whereas the text proposed by The Hague Jurists tends to modify the principle which gives to the parties the right to choose between the two alternatives of judicial procedure or appeal to the Council for the settlement of a dispute which has arisen between them ;

Whereas this would constitute a modification of Article 12 of the Covenant ;

Whereas at the present time there should be no question of considering modifications to this Covenant, but rather of applying it ;

The Council proposes to substitute in the draft scheme of The Hague in place of Articles 33 and 34, the following Articles :

ARTICLE 33.

The jurisdiction of the Courts is defined by Articles 12, 13 *and* 14 *of the Covenant.*

ARTICLE 34.

Without prejudice to the right of the parties according to Article 12 *of the Covenant to submit disputes between them either to judicial settlement or arbitration or to enquiry by the Council, the Court shall have jurisdiction (and this without any special agreement giving it jurisdiction) to hear and determine disputes, the settlement of which is by Treaties in force entrusted to it or to the tribunal instituted by the League of Nations.*

It is to be clearly understood that the Secretariat shall be entrusted if need be to bring the terms of the remainder of the draft scheme into harmony with this new wording of Articles 33 and 34.

By adopting this wording the Council does not in any way wish to declare itself opposed to the actual idea of the compulsory jurisdiction of the Court in questions of a judicial nature. This is a development of the authority of the Court of Justice which may be extremely useful in effecting the general settlement of disputes between Nations, and the Council would certainly have no objection to the consideration of the problem at some future date. In upholding the wording which we have the honour to submit to it, it will confine itself to declaring that at the present time it cannot undertake to propose any modification in the provisions of the Covenant, since such modifications, whatever may be their particular value, can only be introduced without danger when they receive the entirely unanimous approval of the Members of the League of Nations.

2. Retrospective Competency of the Court.

Certain Governments have raised in their observations the question of the retrospective competence of the Court.

This retrospective action may shortly be defined as the application of the organization and methods laid down in the provisions of the Draft Scheme to disputes which are already pending between States at the time of the entry into force of the Convention.

If we are to establish the principle of non-retrospection, we should be obliged to introduce a distinction between Treaties concluded prior to the Court and subsequently to this document, between events which occurred before or after its entry into force. We should be obliged to establish a criterion to determine whether any particular dispute was already pending or not at the moment in question. Neither the Convention nor the draft scheme of The Hague draws such a distinction, nor do they establish such a criterion.

But if we adopt the principle contained in the resolution which I have submitted to you, the whole question of retrospective action loses its importance since the jurisdiction is no longer compulsory.

3. Can the Court be considered Competent to deal with Prize Questions?

The same applies to the question whether the Court can be considered competent to deal with matters of prize. If the compulsory jurisdiction of the Court were maintained, a full discussion of this point would be necessary. The question of prize is, in fact, of a very special nature. It has raised very serious difficulties and it will be remembered that the Governments have not been able to agree as to the ratification of the London negotiations. It would therefore be necessary to come to a decision and to exclude questions of prize from the compulsory jurisdiction of the Court. But if you have adopted the principle which I had the honour to propose at the beginning of this Report, and if the Court is only competent under the conditions laid down by Articles 12 and 13 of the Covenant, one may say that the question ceases to arise. Each party is naturally free to submit to the Court of Justice a prize dispute, if both parties consider this Court to be suitable.

4. The Question of National Judges.

It is clearly essential to put the contending parties before the Permanent Court of International Justice on a footing of complete equality. If only one of the two parties is represented, one may, as has been pointed out by one of our colleagues, proceed either by means of addition or by means of subtraction. The method of addition resembles more closely that of arbitration, the method of subtraction that of national jurisdiction.

It may be held that before a Court of common law, the parties are not part of the Court, that the judges are in another category, that they have been chosen by virtue of special consideration for their own personality, their authority and their competence. But the Committee of Jurists considered that it might be useful to keep in the tribunal someone well acquainted with certain of the exceptional features of the national constitution, of which the non-national judges might not be aware, and that there might exist certain national susceptibilities which from the point of view of the judge's authority it might be important to take into account, that public opinion might be mistrustful if it knew that a dispute in which it was interested was being decided exclusively by judges belonging to foreign nations.

The conditions of equality and of justice being attained equally in the two systems, it appeared to us unnecessary to substitute, for purely theoretical reasons, a new system for that proposed unanimously by The Hague Jurists.

5. Relations between the Court and the League of Nations.

The question has been raised whether the League of Nations as such or its organizations should be allowed to plead before the Court in order to present conclusions or to lay stress upon certain points of view which might appear to them to be in conformity with the general interest.

The essential principle which must be safeguarded is that of the respective independence of the judicial powers represented by the Court and of the international power represented by the Council of the League of Nations. Each of these two powers has its own domain. The powers of the Council and of the Assembly are such that they extend to the transformation of the composition of the Court itself, but when they have fully exercised their rights by establishing international jurisdiction under conditions determined by them it is important for them to allow the latter independence in its judgments. We will thus answer in the negative the question which was put to us on this point.

6. Position of the Judges.

Article 29 leaves to the Council the task of fixing the salaries of the judges. Two systems have been proposed to the Council. On the one hand, it has been held that it was necessary to ensure high salaries to the judges, not only so as to guarantee their absolute independence and to give them a particular authority in the eyes of the world, but also to allow the choice of judges to be made from among the most eminent men holding doubtless in their own country either very important posts or posts which are highly paid.

Certain incompatibilities with regard to this matter are foreseen in The Hague Scheme. If a judge is obliged to resign these duties

or these posts, the recruiting of these magistrates would naturally be more limited, and it will only be possible to obtain the services of persons of secondary importance, who will not give the necessary dignity to the Court.

On the other hand, it has been pointed out that certain judges will only be called upon to sit for a very short period, thus allowing them in certain cases to hold their position as judges of the Court at the same time as certain other posts which are not inconsistent with Article 16.

In any case, it appears that a distinction should be made between the President and the Clerk of the Court and the rest of the judges. The President and the Clerk of the Court are, by Article 22, obliged to reside on the spot, and it will be understood that the President, even apart from the meetings of the Court, should direct the general work of this Court, the preparation of cases which may come up for judgment before him, and the supervision of the carrying out of his judgments.

An annual salary for the President and for the Clerk of the Court thus appears in any case indispensable, and the salary of the President must be extremely high, for it is essential that the head of the international magistracy should be in a position of quite indisputable eminence in the world's eyes.

As to the judges, if attention is to be given to the criticisms to which we have just referred, it would be possible to divide their salaries into two distinct parts: to grant them a moderate fixed salary, and to supplement this by large daily allowances during the time when the meetings will necessitate their presence at The Hague.

7. Nomination of Candidates.

In the draft scheme of The Hague Jurists this nomination is to be made by the national groups of the members of the permanent Court of Arbitration. Certain Governments have, however, in the observations which they have submitted, proposed that the nomination should be made directly by the Governments themselves. It has in fact been alleged that the appointment by the members of the Court of Arbitration would only be a veiled form of appointment by the Government, and that if the new Court were established, the duties of the old Court would be reduced solely to the making of these nominations.

These objections can hardly be brought against the system unanimously proposed by The Hague Jurists after detailed study and very long discussions. The essential object of The Hague Jurists has been to free the nomination of the judges from the political interests of the different countries. Moreover, it must not be forgotten that, as a general rule, each country has the right to nominate not only its own subjects, but also judges belonging to other countries. Thus, as Mr. Root has observed, it would be

difficult in certain cases for a Government to make sure of an election. The special competence of members of the Court of Arbitration, on the contrary, makes possible a solution genuinely in conformity with the essential idea of this lofty jurisdiction.

These remarks appear to allow the system presented by the Committee of Jurists to be maintained in its entirety.

8. The Right of Intervention.

The observations in the draft project of The Hague by one of our Colleagues draw attention to the following case : it might happen that a case appearing unimportant in itself might be submitted to the jurisdiction of the Court, and that the Court might take a decision on this case laying down certain principles of international law which if they were applied to other countries, would completely modify the principles of the traditional law of this country, and which might therefore have serious consequences. The question has been raised whether, in view of such an alternative, the States not involved in the dispute should not be given the right of intervening in the case in the interest of the harmonious development of the law, and otherwise after the closure of the case, to exercise, in the same interest, influence on the future development of law. Such action on the part of a non-litigant State would moreover have the advantage of drawing attention to the difficulty of making certain States accept such and such a new development of jurisprudence.

These considerations undoubtedly contain elements of great value. The Hague Jurists have not, moreover, disregarded the necessity of bearing in mind considerations which, if not exactly identical, are at least in the same order of ideas. They have, indeed, given to non-litigant States the right to intervene in a case where any interest of a judicial nature which may concern them is involved.

Moreover, Article 61 of the draft lays down that : " Whenever the construction of a convention in which States other than those concerned in the case, are parties, is in question, the Registrar shall notify all such States forthwith. Every State so notified has the right to intervene in the proceedings : but if it uses this right, the construction given by the judgment will be as binding upon it as upon the original party to the dispute." This last stipulation establishes, in the contrary case, that if a State has not intervened in the case the interpretation cannot be enforced against it.

No possible disadvantage could ensue from stating directly what Article 61 indirectly admits. The addition of an Article drawn up as follows can thus be proposed to the Assembly :

The decision of the Court has no binding force except between the parties and in respect of that particular case.

The observation presented had, however, a much wider bearing : the question of giving to the various legal systems represented by

the various States the possibility of collaborating with the Court in the development of international law.

It must first of all be noted that the Court will contain representatives of the different judicial systems into which the world is divided, and that the judgments of the Court will therefore be the result of the co-operation of entirely different thoughts and systems.

Need we go further ?

The draft scheme of The Hague gives dissenting judges the right to state their opposition or their reservation without recording their reasons. If these judges were permitted to state their opinions together with reasons, the play of the different judicial lines of thought would appear clearly.

If the assent of the Council were obtained for this view, it would be sufficient to alter the text of Article 56 as follows :

" Judges who do not concur in all or part of the judgment of the Court may deliver a separate opinion."

The question of the language of the Court, which has been also raised, will be dealt with in a separate report.[1]

Such, Gentlemen, are the observations which had to be presented for your consideration on the genuinely important questions which have been raised by the various Governments with regard to The Hague draft. Your *rapporteur* has not been able to append the detailed discussion of the modifications in drafting proposed in various quarters for certain Articles of this draft. As I said at the beginning of my Report, we are not an assembly of jurists competent to correct in detail the work of the most eminent jurisconsults who composed your Hague Committee. These are only the general views of the Council of the League of Nations which should be made known and considered in connection with the proposed text. But taking the text as a whole, I think that we have a duty to fulfil towards the jurists of The Hague, which is to adopt it as our own, and to propose it in its entirety subject to certain modifications which I have already noted, for the consideration of the General Assembly of Geneva. The last word will be left for the States there represented, but it is our duty not to weaken the lofty significance of the draft drawn up with so much competence and care by our Committee of Jurists, by hesitating to adopt this important and maturely considered work.

It will be the duty of the General Assembly to draw up the terms of the future International Convention which is to be submitted for the signature of the Members of the League of Nations.

[1] This report is printed in the *Records of the First Assembly, Meetings of Committees*, pp. 479-480.

13. DRAFT SCHEME AS AMENDED BY THE COUNCIL AT BRUSSELS

N.B.—This text, adopted by the Council at Brussels, is in the same terms as the Jurists' Draft Scheme, set out at pp. 289-299 *supra*, with the exception of the amendments (in italics) printed below.

Article 27.

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules *governing the conditions under which the Vice-President shall take up his duties, and* for summary procedure.

Article 29.

The judges shall receive an annual *indemnity* to be determined by the Assembly of the League of Nations upon the proposal of the Council. This *indemnity* must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

Judges, deputy-judges, *and the Vice-President* shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 28 shall be determined in the same way.

The salary of the registrar shall be decided by the Council upon the proposal of the Court.

A special regulation shall provide for the pensions to which the judges and registrar shall be entitled.

Article 33.

The jurisdiction of the Court is defined by Articles 12, 13 *and* 14 *of the Covenant.*

Article 34.

Without prejudice to the right of the parties, according to Article 12 *of the Covenant, to submit disputes between them either to judicial settlement or arbitration or to enquiry by the Council, the Court shall have jurisdiction (and this without any special agreement giving it jurisdiction) to hear and determine disputes the settlement of which is by Treaties in force entrusted to it or to the tribunal instituted by the League of Nations.*

ARTICLE 35.

The Court shall, within the limits of its jurisdiction as defined above, apply in the order following :

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States.

2. International custom, as evidence of a general practice which is accepted as law.

3. The general principles of law recognized by civilized nations.

4. *Subject to the provisions of Article* 57 (*bis*), judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

ARTICLE 36 *bis*.

When the parties to a dispute agree to submit it to the jurisdiction of the Permanent Court of International Justice, the Court shall, in the first place, apply the rules of procedure which may have been laid down in the agreement and, in the second place, in so far as they are applicable, the rules of procedure contained in The Hague Convention of 1907 *for the pacific settlement of international disputes, always provided such rules are consistent with the provisions of Articles* 1-36, 37, 39, 49 *and* 59 *of the present Convention.*

ARTICLE 37.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers ; the decision of the Court will be given in both languages. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

ARTICLE 56.

Judges who do not concur in all or part of the judgment of the Court may deliver a separate opinion.

ARTICLE 57 *bis*.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

14. REPORT SUBMITTED TO THE THIRD COMMITTEE OF THE ASSEMBLY OF THE LEAGUE BY M. HAGERUP ON BEHALF OF THE SUB-COMMITTEE[1]

The Sub-Committee has devoted conscientious and detailed study to the draft scheme for an International Court of Justice and the different amendments proposed thereto.

It has the honour herewith to submit to the Committee the text which it proposes for the Committee's adoption. It takes the liberty of accompanying the text with the explanations which follow, and to add the general remark that it has felt bound to make certain slight alterations in the English text to make it correspond as closely as possible with the French text. These alterations being purely in form and language, it does not seem necessary to enter into fuller explanations with regard to them.

The Sub-Committee further desires to make the following general observation: It has not dealt with the question, raised by the Italian Delegation, as to whether the draft should be accompanied by a preamble, for this is connected with the question of the form which the draft is to take (whether it is to be a Convention or whether it is to be simply adopted by the Assembly of the League of Nations).

Article 1 (*Text adopted by the Council at Brussels, Art.* 1).

The words " to which Parties shall have direct access " have been deleted, on the ground that, since the provisions of the draft scheme of The Hague with reference to the right of unilateral arraignment have been modified, they involve a certain ambiguity.

The proposal made by the Argentine Delegation to suppress the Permanent Court of Arbitration of The Hague was unanimously rejected by the Sub-Committee. It was thought that this Court would still have a rôle to fill in certain international disputes which lend themselves more easily to arbitral decision than to an award based on strict rules of law. Further, it was pointed out that the present scheme cannot abolish a Convention signed by several States which are not Members of the League of Nations.

Article 3 (*Brussels, Art.* 3).

The Sub-Committee has not adopted the Colombian amendment, which had already been urged before the Committee. Its purpose

[1] The Sub-Committee worked on the Jurists' Draft Scheme, as amended by the Council at Brussels (see pp. 310-311 *supra*). The alterations introduced by the Sub-Committee are embodied in the Statute of the Court (set out at pp. 240-254 *supra*), the text of which corresponds to the text adopted by the Sub-Committee subject to the amendments made by the Third Committee (see pp. 324-328 *infra*) and the slight alteration in Article 27 introduced by the Assembly itself (see p. 12, footnote 4 *supra*).

was to establish a distribution of judges between the different continents in certain proportions. Such a rule was considered too rigid, and was deemed unnecessary in view of the provision in Article 9, which enables the same result to be obtained by a more flexible rule.

Articles 4 and 5 (*Brussels, Art. 4 and 5*).

It was pointed out that the provisions in these Articles involve the difficulty that not all the Members of the League of Nations are signatories of the Conventions of The Hague relating to the Permanent Court of Arbitration, and consequently that some of them have no national groups in this Court. Several amendments were proposed to meet this difficulty. Some of them assigned to the Governments the right of nominating candidates, either generally or else in the case of those States which are not signatories of the Convention. The Sub-Committee has not adopted any of these amendments. It considered that the nomination should be as far as possible independent of political considerations, and that the Governments which would have to vote on the candidates in the Council and Assembly should not have their hands tied in advance by the nomination of these candidates. Consequently, the Sub-Committee decided upon the following solution :

In countries which have no national groups on the Permanent Court of The Hague, the nomination shall be made by a body consisting of persons appointed for this purpose by their Governments under the same conditions as those presented for members of the said Court.

An Argentine amendment proposed increasing the number of candidates to five. As this question had been very fully discussed by the Jurists' Committee at The Hague, the Sub-Committee decided that it should not alter the solution adopted in the draft scheme.

Article 6 (*Brussels, Art. 6*).

There were certain doubts in the Sub-Committee as to the utility of retaining this Article. It was pointed out that in several countries it would be difficult, if not impossible, to comply with its provisions. On the other hand, the fact was emphasized that the question here was one of a mere recommendation which, if followed, would provide a kind of guarantee for the choice of the most competent persons. This being the case, the Sub-Committee thought it should not suppress the Article.

Article 8 (*Brussels, Art. 8*).

An Italian amendment proposed laying down the rule that elections in the Council and Assembly should take place simultaneously. The Sub-Committee did not adopt this amendment, which would

make it impossible to establish the necessary contact between the two bodies in the election.

ARTICLE 9 (*Brussels, Art.* 9).

The Sub-Committee has replaced the words " veillent à ce que " by " auront en vue que," to effect a closer conformity between the French and English texts, the latter of which seems the more exact expression of the idea of the authors of the draft scheme.

ARTICLE 10 (*Brussels, Art.* 10).

On the proposal of the Canadian Delegate, the Sub-Committee has altered the second paragraph of this Article to make it clear that it is essential for the proper application of this provision, not that the persons elected should be merely of the same nationality, but that they should be subjects of the same Member of the League of Nations.

ARTICLE 12 (*Brussels, Art.* 12).

On the suggestion of the British Delegate, the Sub-Committee has slightly modified the wording of the third paragraph so as to empower the joint conference, in case a first attempt to reconcile the diverging opinions does not succeed, to proceed to repeated nominations of candidates until it becomes evident that it cannot arrive at any result.

On the other hand, the Sub-Committee thought that there was no sufficient reason for increasing the number of members of the joint conference to ten, as proposed by the British Delegate, when the number of States permanently represented on the Council is increased in conformity with Article 4 of the Covenant.

ARTICLE 14 (*Brussels, Art.* 14).

A British amendment proposed the deletion of the last sentence of this Article. In support of this amendment, reference was made to the inconvenience of electing judges for a term which might be very short and to the possible difficulty of finding a competent candidate willing to accept election under these conditions. Mention was also made of the danger to the continuity of the work of the Court involved in a complete and simultaneous renewal of all the seats. On the other side, it was urged that the second sentence of Article 14 was intimately connected with the system designed in the draft to establish an equitable distribution of the seats between the different parts of the world. The Sub-Committee held that this last consideration was conclusive.

ARTICLE 16 (*Brussels, Art.* 16).

Both the form and principle of this Article were criticized. It was pointed out that the provision lacked clearness, and that the

English text, particularly, was difficult to understand and to apply. As for the principle, it was observed that the Article did not go far enough in determining cases of incompatibility.

The Italian Delegate proposed a new paragraph for the Article, to the following effect :

" The function of a Member of Parliament shall not be considered as belonging to the political direction of States, within the meaning of this Article."

The Sub-Committee, while rejecting this amendment, was nevertheless unanimous in recognizing that the exercise of the function of judge by members of a Parliament, as in the House of Lords in England (" Law Lords "), should not be incompatible with the duties of a member of the Court.

The Sub-Committee has adopted the following text : " Members of the Court may not hold any political or administrative function."

Article 18 (*Brussels, Art.* 18).

An Italian amendment proposed that for the dismissal of a judge unanimity on the part of the other judges should not be required, but merely a strong majority.

The Sub-Committee considered that unanimity alone was a sufficient guarantee against the possibility of undue influence upon a resolution of so grave a character as that in question.

The Sub-Committee has added to the second paragraph of the Article the words " by the Registrar," to avoid the implication that the President of the Court must personally give the notification required in this paragraph.

Article 19 (*Brussels, Art.* 19).

The Sub-Committee has given this Article a wording corresponding to that of Article 7 of the Covenant, where the question of the immunities of officials of the League of Nations is dealt with.

The Sub-Committee was of opinion that the question of the situation of judges in their own countries should not be prejudiced by the solution adopted.

Article 23 (*Brussels, Art.* 23).

With regard to the provisions in the first two paragraphs of this Article, the question was raised in the Sub-Committee whether a date should be fixed in the text for the commencement of the ordinary Session of the Court, or whether it was not better to leave to the President the duty of convening the Court on a suitable date. In this connection a proposal was made to delete the second paragraph and substitute for the first paragraph the following text :

" An ordinary session, to be convoked by the President, shall be held every year."

The Sub-Committee has thought fit to retain the original of the Article. It was thought that it would be of advantage to persons who might be nominated as judges, as well as to all those who might have recourse to this tribunal, to know in advance exactly when the ordinary sessions would commence.

The Swiss Delegate had proposed the following addition to the third paragraph :

" Particularly when a dispute is submitted to it under Article 12 of the Covenant."

The Sub-Committee considered that the words " whenever necessary " have sufficient scope to cover any hypothesis.

ARTICLE 24 (*Brussels*, *Art.* 24).

In the first paragraph the Sub-Committee has substituted the words " should not " for " cannot " in order to make it clear that the circumstances contemplated are not merely such as render it impossible for a judge to perform his duties, but such as impose on him a moral duty to retire.

ARTICLE 25 (*Brussels*, *Art.* 25).

An Italian amendment proposed adding to this Article the following provisions :

" The quorum of nine, however, is sufficient to constitute the Court, without prejudice to the right of each party to demand that the argument and decision of the case shall be deferred until eleven judges are present."

The Sub-Committee preferred not to give the parties this influence on the composition of the Court.

ARTICLE 26 (*British Amendments*, *Art.* 26 bis).

Apart from international disputes which may, in a general way, arise out of Labour questions, the Treaty of Versailles, Articles 416, 418 and 423, specifically provides that the Permanent Court of Justice shall have jurisdiction to deal with certain disputes which may occur in connection with the performance of duties imposed by the International Labour Conventions ; there are similar provisions in other treaties of Peace.

These disputes may present features which are not of an exclusively legal character ; and in order to provide a guarantee that the Court shall be able to adjudicate in the cases with full knowledge of all the various factors which must be taken into account, and at the same time to gain for the Court the full confidence of the peoples, it has been thought desirable to take special measures with regard to these cases. M. Albert Thomas, director of the International Labour Office, has proposed adding, for the settlement of these questions, to the regular judges of the Court, judges chosen from

amongst persons of known competence in Labour legislation and social questions. The Sub-Committee has not thought it possible to go so far. It has considered that it would be sufficient, to attain the desired end, to give these experts, as suggested in a British proposal, the character of assessors, who shall take their place beside the judges and deliberate with them in an advisory capacity, but without taking part in the decision itself. This solution, moreover, is in conformity with a proposal made by M. Albert Thomas in a letter dated February 20, 1920, addressed to the Secretary-General of the League of Nations.

With regard to the choice of these assessors, it must be borne in mind that in the different questions which may be submitted to the Court by virtue of the Treaties mentioned above, the special competence required may not always be of the same character. When it is necessary to decide what sanction must be provided for the Convention in relation to a State which has not performed its duty, the expert required by the Court will, in the first place, be a person with financial or economic knowledge, whereas in considering questions relating particularly to Labour it will be advisable to have the points of view of the employers as well as of the workmen explained in the Court. The Sub-Committee has tried to take these considerations into account in the text which it now submits.

Both the British proposal and that of M. Thomas set up a special Chamber of the Court for these cases, consisting of a smaller number of ordinary judges than that provided in Article 25 of the draft. These judges will be appointed for three years, in order to ensure that they will acquire special competence in the questions concerned, and that the jurisprudence of the Court may with a greater amount of certainty maintain continuity.

As, however, some members of the Committee pointed out with considerable emphasis that it would be more difficult to realize the principles laid down in Article 9 of the draft when the number of judges taking part in a decision is considerably reduced, the Sub-Committee has given the Chamber power to adjudicate only on the request of the parties. In the absence of such request, the Court will sit with the ordinary number of judges. But in any case, the judges will be assisted by assessors in conformity with the rules explained above.

Article 27 (*British Amendments, Art.* 26 ter).

Similar considerations to those appealed to in connection with the rules of Article 26 also apply in cases relating to Transit and Communications, particularly in the questions mentioned in Part 12 (Ports, Waterways, Railways) of the Treaty of Versailles and the corresponding parts of the other Peace Treaties. In these matters as well, the questions which the Court will have to decide will generally be of a very technical character, which may make co-operation with experts highly desirable. For these reasons, the

Sub-Committee has felt bound to adopt a British proposal to lay down for these cases rules analogous to those of Article 26.

ARTICLE 28 (*British Amendments*, *Art.* 26 quater).

In certain cases it may be an advantage to give the Court the power of meeting in a place other than The Hague for the settlement of the questions mentioned in Article 26 and Article 27. In proposing to give the Court this power, the Sub-Committee assumes that the Court may make it incumbent upon the parties to defray the expenses of such a measure.

ARTICLE 30 (*Brussels*, *Art.* 27).

The Sub-Committee considered superfluous the words " governing the conditions under which the Vice-President shall take up his duties." It has, therefore, deleted these words. In the Committee's opinion, it goes without saying that the Court will have power to lay down in its rules of procedure that a Vice-President, for example, whose domicile is too distant to permit his being summoned at short notice to fulfil his duties, must live at the seat of the Court.

ARTICLE 31 (*Brussels*, *Art.* 28).

To conform with the changes made in Articles 4 and 5, the Sub-Committee has replaced in the second paragraph the words " by some national group in the Court of Arbitration," with the words " as provided in Articles 4 and 5."

On the suggestion of the Italian Delegate, the Sub-Committee proposes to add to the fourth paragraph the words " any doubt on this point shall be settled by the decision of the Court."

An Italian amendment had proposed adding the following phrase to the last paragraph : " They shall not, however, be included in the quorum of nine, or of eleven judges, stipulated in Article 25."

In the Sub-Committee's opinion this went without saying.

ARTICLE 32 (*Brussels*, *Art.* 29).

In conformity with the draft scheme drawn up by the Jurists' Committee at The Hague, the Sub-Committee has added a paragraph providing a regulation for the pensions of the personnel of the Court, without, however, making any pronouncement upon the question as to whether a right to such persons should be granted.

ARTICLE 34 (*Brussels*, *Art.* 31).

This Article establishes rules of the competence of the Court *ratione personæ*. It lays down that the Court shall have jurisdiction to hear and determine suits between States. It consequently excludes private individuals from presenting themselves before the

Court. While retaining this rule, the Sub-Committee has considered that it would be expedient to express it in clearer form and to assimilate the position of all the Members of the League of Nations to that of States.

The Sub-Committee unanimously recognizes the right of States to present themselves as joint parties before the Court.

Article 35 (*Brussels, Art.* 32).

The wording of this Article seemed lacking in clearness, and the Sub-Committee has re-cast it in an effort to express clearly what follows :

1. To the Members of the League of Nations and the States mentioned in the Annex to the Covenant, the Court is open. The expression " Member of the League of Nations " includes those who subsequently enter the League as well as the present Members.

2. The access of other States to the Court will depend either on the special provisions of the Treaties in force (for example, the provisions of the Treaties of Peace concerning the right of minorities, labour, etc.) or else on a resolution of the Council. Such resolution may lay down conditions of access in conformity with Article 17 of the Covenant, but in no case must these conditions result in any inequality of the parties before the Court.

Articles 36 and 37 (*Brussels, Art.* 33 *and* 34).

The Sub-Committee has had before it several amendments tending to extend more or less the sphere of compulsory jurisdiction and the right of the parties to proceed by way of unilateral arraignment. The Sub-Committee has decided that it could not adopt these amendments, and that it should rather maintain the principles enunciated on this point in the Council's draft. Whatever differences of opinion there may be on the interpretation of the Covenant with regard to the acceptance of a compulsory jurisdiction within the scope of its provisions, and upon the political expediency of adopting an unconditionally compulsory jurisdiction in international relations, the Sub-Committee was unable to go beyond the consideration that unanimity on the part of the League of Nations is necessary for the establishment of the Court, and that it does not seem possible to arrive at unanimity except on the basis of the principles laid down in the Council's draft.

With regard to the terms in which the Council has formulated these principles, the Sub-Committee considered that the rule governing the jurisdiction of the Court would gain by a slightly different expression. The text adopted by the Sub-Committee aims at formulating as clearly as possible the following ideas :

1. The jurisdiction of the Court is in principle based upon an agreement between the parties. This agreement may be in the form of a special Convention submitting a given case to the Court,

or of a Treaty or general Convention embracing a group of matters of a certain nature.

2. With regard to the right of unilateral arraignment contemplated in the words (" and this without any special agreement giving it jurisdiction ") in the Council's draft, the Sub-Committee, by deleting these words, has not changed the meaning of the draft. In conformity with the Council's proposal, the text prepared by the Sub-Committee admits this right only when it is based on an agreement between the parties. In the Sub-Committee's opinion, the question must be settled in the following manner : If a Convention establishes, without any reservation, obligatory jurisdiction for certain cases or for certain questions (as is done in certain general arbitration treaties and in certain clauses of the Treaties of Peace dealing with rights of minorities, labour, etc.) each of the parties has, by virtue of such a treaty, the right to have recourse without special agreement (*compromis*) to the tribunal agreed upon. On the other hand, if the general Convention is subject to certain reservations (" vital interests," " independence," " honour," etc.), the question whether any of these are involved in the terms of the Treaty being for the parties themselves to decide, the parties cannot have recourse to the International Tribunal without a preliminary agreement (*compromis*).

3. Finally, the Sub-Committee thought that it should establish the rule that when a treaty or a convention provides for reference to a tribunal to be established by the League of Nations, the Court established by the present draft shall be that tribunal. This provision will have a practical application, particularly in the cases mentioned in the Treaties of Peace for submission to an International Tribunal. It does not include existing conventions which refer certain disputes either to a Court of Arbitration generally or to the Permanent Court of Arbitration of The Hague. To substitute the new Court of International Justice for these Courts of Arbitration would require a special agreement.

Article 38 (*Brussels, Art.* 35).

An Argentine amendment proposed a new text for this Article, intended, among other things, to limit the power of the Court to attribute the character of precedents to judicial decisions.

The Sub-Committee has not adopted this amendment. On the contrary, it considered that it would be one of the Court's important tasks to contribute, through its jurisprudence, to the development of international law.

The Sub-Committee has, however, made the following changes in the Article :

(1) At the beginning of the Article it has deleted as unnecessary the words " within the limit of its jurisdiction as defined above," also the words " in the order following."

(2) It has added a new clause to the Article in order to permit the

Court, if necessary and with the consent of the parties, to make an award *ex æquo et bono*.

(*Brussels*, *Art.* 36).

Article 14 of the Covenant provides that the Assembly and the Council may ask the Court for advisory opinions. The Sub-Committee considers that these opinions should, in every case, be given with the same quorum of judges as that required for the decision of disputes, and that there is no need to maintain the distinction established in this respect by the draft scheme between the cases where a question submitted to the Court is the subject of a dispute which has actually arisen, and where there is no existing dispute. This distinction seemed lacking in clearness and likely to give rise to practical difficulties. The Sub-Committee was further of the opinion that the draft here entered into details which concerned rather the rules of procedure of the Court.

Accordingly, the Sub-Committee proposes that this Article should be suppressed.

Certain proposals to give either to the Governments or to the International Labour Office the right of asking the Court for advisory opinions have not been adopted by the Sub-Committee, which considers that such provisions would involve a considerable extension of the duties of the members of the Court and might lead to consequences difficult to calculate in advance.

(*Brussels*, *Art.* 36 bis).

The Sub-Committee was of opinion that it should suppress this Article, which had been proposed by the Secretariat-General as a result of the changes made by the Council in the text of The Hague. The Sub-Committee did not consider that there was any necessary relation between the new rules laid down in the Council's draft as to the jurisdiction of the Court and the rules of procedure proposed in this Article. In its opinion the procedure to be followed before the Court should be the same in every case, without any distinction between the different grounds of its jurisdiction (special Convention of the parties or pre-existing obligation under a Treaty) but without prejudice to the right of the parties to modify the procedure in so far as it depends upon the rights which they may renounce.

Article 39 (*Brussels*, *Art.* 37).

A Spanish amendment proposed adding to the last paragraph of this Article the following clause :

" This authorization cannot be refused when it is requested by all the parties to the dispute."

The Sub-Committee has not adopted this amendment. It considered that such a rule might give rise to difficulties for the judges,

by imposing on them the necessity either of knowing several languages or of having the pleadings translated by interpreters.

Article 40 (*Brussels, Art.* 38).

The Sub-Committee has slightly modified the wording of this Article without changing its principle.

Article 42 (*Brussels, Art.* 40).

On the proposal of the British Delegation the Sub-Committee has made a slight change in the wording of this Article. On the other hand, it was unable to adopt the Argentine amendment, which was to the following effect :

" The parties shall be represented by agents."

" They may have counsel or advocates to represent them or to plead before the Court."

Only the agents can represent the parties, but they may at the same time fill the rôle of advocates.

Article 43 (*Brussels, Art.* 41, 42 *and* 43, 1*st para.*).

On the suggestion of the Italian delegate the Sub-Committee has combined 41, 42 and the first paragraph of 43 (Brussels text) in a single Article, because a clearer arrangement of the connected matters treated therein is thus obtained, the first paragraph of 43 (Brussels text) having no relation to the other provisions in that Article.

Article 46 (*Brussels, Art.* 45).

The question of the publicity of the Sessions of the Court was exhaustively discussed by the Sub-Committee. On the one hand, it was maintained that it was not possible to apply in their entirety, to disputes between States, the principles accepted in national Courts. Publicity, or even the decision of the Court in a particular case to hold a private Session, might in international disputes give rise to undesirable incidents and exercise a regrettable influence upon the work of the Court. For this reason it had been proposed either that non-publicity should be the rule, or else that the text should leave to the Court complete liberty in deciding the question whether the Session was to be public. On the other hand, it was pointed out that the principle of the publicity of judicial discussion was of capital importance in winning for the Court and its judges the confidence of the public, and that non-publicity should always be an exception. The last opinion prevailed in the Sub-Committee, which has, however, left to the Court the power of holding a private session, either when it considers that there are reasons for so doing, or when both parties request it.

ARTICLE 51 (*Brussels, Art.* 50).

The Committee has studied the question whether agents, advocates and counsel should have the right to put questions directly to the witnesses and experts, or whether this should always be done through the President. It was decided to leave it to the Court to settle this question in its rules of procedure.

ARTICLE 53 (*Brussels, Art.* 52).

In the second paragraph the Sub-Committee has deleted as unnecessary the words " supported by substantial evidence."

ARTICLE 57 (*Brussels, Art.* 56).

There was an exchange of views in the Sub-Committee on the provision proposed by the Council with regard to the right of dissenting members of the Court to have their individual opinions published. Though several members would have preferred not to grant such a right, the Sub-Committee decided not to depart from the Council's proposal, which is strongly advocated, especially by the Anglo-Saxon jurists. The reasons upon which the proposal is based are shown in the Council's report.[1]

ARTICLE 61 (*Brussels, Art.* 59).

An Argentine amendment proposed dispensing with any limitation of the period for the application for revision. Because of the difficulties which might result from a revision taking place at a time when a certain situation, based on the judgment of the Court, had become established and had existed for many years, the Sub-Committee was unable to adopt this proposal.

The Sub-Committee has, however, made two changes in this Article:

1. Extension of the absolute period of limitation from 5 to 10 years.
2. Introduction of a very short period (six months) for the right of making an application for revision after the discovery of the new fact.

ARTICLE 62 (*Brussels, Art.* 60).

An Italian amendment also proposed giving the International Labour Office, as well as other international institutions of similar character, the power of intervention in cases before the Court. The Sub-Committee considers that such a power would be contrary to the terms of Article 34, which lays down that only States may be parties before the Court.

[1] See p. 309 *supra*.

Article 64 (*Brussels, Art.* 62).

The Sub-Committee unanimously recognizes that the terms of this Article do not prevent division of the costs between the parties in accordance with an agreement between them.

An Argentine amendment proposed adding to the draft scheme a new Article in the following terms :

" The final award of the Court shall be binding upon the contesting States. Any State which refuses to comply with the final award of the Court shall be excluded from the League of Nations. If the failure to carry out the decision is of a nature capable of disturbing the peace of the world, the Assembly and the Council shall have the power to take the measures provided."

The Sub-Committee has not thought fit to adopt this proposal, which would appear to contain an amendment or addition to the Covenant.

It was also proposed to add a clause expressly applying to the decisions of the Court the sanctions provided in Article 13 of the Covenant, as has already been done in Article 69 of the Treaty of St. Germain and the analogous provisions contained in the treaties relating to the position of minorities. The Sub-Committee considers such a clause superfluous in view of the provisions in the Covenant and the above-mentioned treaties.

15. REPORT OF THE THIRD COMMITTEE OF THE ASSEMBLY

Rapporteur, M. Hagerup.

The Assembly of the League of Nations referred to the Third Committee the draft schemes for an International Court of Justice and the amendments proposed thereto, by the various Governments and by certain members of the Assembly. The Committee appointed a Sub-Committee of 10 members, five of which had formed part of the Jurists Committee of The Hague. The Sub-Committee submitted to the Committee the report [1] and the draft text [2] attached hereto. Both report [1] and text [2] have been unanimously adopted by the Committee, with the following modifications :

Article 5.

In the first paragraph the Committee has introduced a provision to the effect that the nomination of candidates must be carried out within a given time.

[1] Set out at pp. 312-324 *supra*.

[2] The text here referred to corresponds with that of the Statute of the Court (set out at pp. 240-257 *supra*), subject only to the amendments mentioned in the present report, and the slight alteration to Article 27, introduced by the Assembly (see p. 12, footnote 4 *supra*). See footnote, p. 312 *supra*.

The Committee has increased the number of candidates who may be nominated in order to give the different groups a larger opportunity to propose candidates of universally known competence but of a nationality other than that of the nominating group. In no case, however, can more candidates be nominated than double the number of seats to be filled. If, for example, there is only one seat, the number of candidates to be nominated will be two.

Articles 16 and 17.

The Committee considered that it would be an excessive measure to apply the provisions of this article as a whole to the deputy-judges. It has therefore introduced special rules for the deputy-judges.

Article 26.

After hearing the Director of the International Labour Office, the Committee has added to this article a provision empowering the Director to furnish the Council with all necessary information; for this purpose, the Director will receive copies of all written documents of procedure.

Article 36.

On the motion of the Brazilian Delegate, the Committee has added a new paragraph to this article, empowering States and Members of the League of Nations which may be willing to accept compulsory jurisdiction in a larger measure than provided for in the first paragraph of the article, to make declarations on this subject at the time of ratification or at a later moment.

The effect of this provision is as follows: It gives power to choose compulsory jurisdiction either in all the questions enumerated in the article or only in certain of these questions. Further, it makes it possible to specify the States (or Members of the League of Nations) in relation to which each Government is willing to agree to a more extended jurisdiction.

Article 41.

The Committee has slightly altered this article in such a way as to make it cover omissions which infringe a right as well as positive acts.

The question as to the form in which the Statute of the Permanent Court of Justice should be adopted, was the subject of long discussion and of detailed study both in the Sub-Committee and in the Committee.

On the one hand, it was insisted that a Convention or Protocol signed by the Governments and submitted for ratification would be necessary.

On the other it was pointed out with much force that it would considerably weaken the authority of the Assembly and establish a harmful precedent if a unanimous resolution of the Assembly had to be submitted to the Governments for further approval.

The Committee finally agreed that, in view of the special nature of the terms of Article 14 of the Covenant with regard to the Constitution of the Permanent Court of Justice, it would be possible to submit that Constitution to the Governments for approval without establishing a precedent for other resolutions of the Assembly.

The Committee thinks it may assume that the unanimous adoption of the draft-scheme will be followed, within a short time, by ratification on the part of all the Members of the League of Nations, so that the elections necessary for the establishment of the Court may take place at the next meeting of the Assembly.

ARTICLES 5, 16, 17, 26, 36 AND 41
(AS AMENDED BY THE THIRD COMMITTEE, DECEMBER 10, 1920).

ARTICLE 5 (*Brussels, Art.* 5).

At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which shall have joined the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ARTICLE 16 (*Brussels, Art.* 16).

The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

ARTICLE 17 (*Brussels, Art.* 17).

No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision does not apply to the deputy-judges except when performing their duties on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties or as a member of a

national or international Court, or of a Commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ARTICLE 26 (*British Amendments, Art.* 26 bis).

Labour cases, particularly cases referred to in Part XIII. (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the Chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with Rules of Procedure under Article 30 from a list of " Assessors for Labour Cases," composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate as to one-half, representatives of the workers, and as to one-half, representatives of the employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

ARTICLE 36 (*Brussels, Art.* 33).

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol, to which the present Act is adjoined, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obliga-

tion, the jurisdiction of the Court in all or any of the classes of legal disputes concerning :

(*a*) The interpretation of a Treaty.

(*b*) Any question of International Law.

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation.

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 41 (*Brussels*, *Art.* 39).

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

DRAFT RESOLUTION

1. The Assembly unanimously declares its approval of the draft Statute of the Permanent Court of International Justice—as amended by the Assembly—which was prepared by the Council under Article 14 of the Covenant and submitted to the Assembly for its approval.

2. In view of the special wording of Article 14, the Statute of the Court shall be submitted, within the shortest possible time, to the Members of the League of Nations for adoption in the form of a Protocol duly ratified and declaring their recognition of this Statute. It shall be the duty of the Council to submit the Statute to the Members.

3. As soon as this Protocol has been ratified by the majority of the Members of the League, the Statute of the Court shall come into force and the Court shall be called upon to sit in conformity with the said Statute in all disputes between the Members or States which have ratified, as well as between the other States to which the Court is open under Article 35, paragraph 2, of the said Statute.

4. The said Protocol shall likewise remain open for signature by the States mentioned in the Annex to the Covenant.

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